THE GOVERNING OF CHILDREN

Social policy for children and young persons

in New Zealand

1840—1982

A thesis

submitted in fulfilment

of the requirement for the Degree

of

Doctor of Philosophy

in the

University of Canterbury

by

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University of Canterbury

1988

ACKNOWLEDGEMENTS

Help with identifying and clarifying material collected during the research for this inquiry was given by so many people that I cannot list them all individually. To those who recognise themselves in that category, I extend my thanks.

My teachers and colleagues over the thirty years that I have worked in the social services contributed to this study in two ways. First, by allowing me the time to pursue solitary research and writing tasks, and second, by provoking my imagination on questions concerning children and child welfare.

Jack Luckock helped me to interpret some of the events of our time in social work for the Child Welfare Division and the Department of Social Welfare. I take responsibility for the final product, but I thank him for reminding me that victories for children were won by the men and women who worked for them. Not only did they believe that they were taking the right course, but also they had the backing of society in doing so.

Professor Bill Willmott was my dissertation supervisor. His scholarly stimulation helped me immensely.

Unconditional support and practical assistance was given by my wife, Shirley McDonald-Hull, and our sons Quentin and Matthew.

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ABBREVIATIONS EMPLOYED

AJHR	Appendix to the Journals of the House of Representatives
BMA	British Medical Association (New Zealand Division)
CWD	Child Welfare Division, Department of Education
CWO	Child Welfare Officer
comp.	compiler
DPB	Domestic Purposes Benefit
DSW	Department of Social Welfare
ed.	editor(s)
HRC.	Human Rights Commission
IYC	International Year of the Child
J.	Journal
M. P.	Member of Parliament
NCIYC	National Commission for International Year of the Child
N. Z.	New Zealand
NZASW	New Zealand Association of Social Workers
NZCER	New Zealand Council for Educational Research
NZOYB	New Zealand Official Yearbook
NZPC	New Zealand Planning Council
NZPD	New Zealand Parliamentary Debates (Hansard)
NZSWTC	New Zealand Social Work Training Council
OHMF	Oral history of the McDonald Family
OPCVP	Otago Provincial Council Votes and Proceedings
PCPC	Proceedings of Canterbury Provincial Council
psued.	pseudonym
PSSA	Presbyterian Social Service Association
Reg.	Regulation (statutory)
s.	Section (of statute)
SDC	Social Development Council
SNZ	Statutes of New Zealand

ABSTRACT

This inquiry studies the changing position of children and young persons in New Zealand society. In structure, it is a chronological narrative that acts as a vehicle for setting out governmental and non-governmental policies and their implementation which have acted to control the lives of children and their parents or caregivers. It is about ways of governing children.

The inquiry is directed towards justifying and elaborating a single and over-arching proposition: that children and young persons ought to be considered as a distinct *social policy* interest group apart from other social divisions. The notion of *children's rights* is given central importance as an indicator of the direction and influence of policy for children.

The approach that links those second-order theories together, and which structures the overall study, is that of ascertaining *social values through periodisation*. In brief, this proposes that in the matter of policy for children, the events and practices which influence policy and rights assume a cluster of value characteristics. The values are cumulative but not mutually exclusive, so that they indicate potentialities rather than absolutes. The nature of social provision for children in each period is established to show these cumulative changes. The evidence shows that influential social values towards children over the period 1840—1982 fall into five main periods:

- Ø 1840—1879, in which the child is portrayed as a *chattel* of its caretakers and generally bereft of social rights;
- Ø 1880—1913, the period of the child as a *protected person*, guarded by the state but with limited individual rights;
- Ø 1914—1944, the period of the child as *social capital* worthy of investment for the value it may return as a productive adult;
- Ø 1945—1968, the time when the child was viewed as *psychological*

being in which nurturance and intervention was consciously guided by theories of human behaviour both normal and abnormal;

Ø 1969—1982, characterised by the emergence of the children's rights movement and the notion of the *child as citizen*.

The inquiry concludes with these general findings:

(1) That it is possible to defend the characterisation of time periods in which children have acquired explicit rights,

(2) that children as a category of society have not usually been treated as an interest group in their own rights,

(3) that policy for children should be treated as a discrete subject within policy studies, and

(4) that the issue of children's rights in New Zealand society remains an open question and that that advocacy for children in the arena of social policy needs continually to be re-examined in the course of changing knowledge, beliefs and attitudes.

CHAPTER I

INTRODUCTION

This inquiry has a starting point and a finishing point. It begins in 1840 when the European colonization of Aotearoa began in earnest and concludes around the year1982. The topic is children, but approached in a way which is seldom considered and even less frequently realised in action in New Zealand. In particular, it puts children and young persons at the centre of a policy study as the *subject* rather than the more common practice of treating children as object. As the title suggests, the inquiry centres on those practices which shape and control the lives of children. In this chapter, the central theme, the theoretical stance and the structure of this inquiry are laid out.

While the topic is *children*, the theme is *children's rights* . The idea of civil, political and social rights for adults is now firmly entrenched in Western democracies, and the nature and extent of those rights have become the criterion of demarcation between democracies and non-democracies. Apart from scattered attempts by seventeenth-century philosophers to use the position of children (along with the insane, the criminal and other protected persons) to expand and buttress their central theses on the nature of freedom, liberty and rights (Kleinig, 1976), the notion of children's rights did not fully re-emerge as a subject for intellectual and public debate until the 1970s. That is not to claim that the status ascribed to childhood, to non-adulthood, has not attracted certain conditional rights, such as the right to rescue and protection. In turn, the growth of that rescue movement has seen a shift in the locus of power from the Church and the immediate community—notably the parish—to the centralised state and its agents. The state is charged with social regularisation and control and, in New Zealand as elsewhere, over the last century its interventions to govern children have expanded in those areas. No other social category is the direct target for control by the state in so many areas of activity and especially in the fields of health, education, employment and welfare. The idea of *rights* can be

considered the orienting notion which determined the content and flow of this study and the substantive discussion on it appears in the third chapter.

While the inquiry deals with most of the innovations in the governing of children, those falling in the areas of health, education and employment are dealt with only in a generalized fashion up to the 1930's and, after that time, hardly at all. There are two principal reasons for that decision. The first is that they are not now connected with their origins. As these institutions grew to be embedded in everyday life, structured inequality in health, education and access to employment became less certain and less apparent to most people. In other words, over time these areas became less socially divisive in New Zealand society, and regarded as constants rather than as discretionary welfare. My theme lies more in welfare and elements of control. The second reason was purely one of expediency, given that the topic of education alone has a complex historical foundation and a massive New Zealand literature as a field of study. I have been deliberatively selective, and I acknowledge that there are meaningful stories to tell about children from the perspective of those disciplines. In the elaboration of the notion of social policy, I make it clear that the institutions of health, education, income maintenance, the personal social services, labour law and housing are best understood as parts of an overall social welfare system. That is the position I take throughout this work.

Two worlds of childhood. Ever since Disraeli had one of his characters in *Sybil* (1845: 76) talk of rich and poor as "Two Englands—two nations between whom there is no intercourse and no sympathy", cleavage by inequality into two co-existing nations has been powerful imagery. While there is a case to be made for the two estates of childhood and adulthood to be similarly described, the more compelling cleavage is between the children of privilege and the children of deprivation. From birth to adulthood, there is an extensive range of hazards to be negotiated, and all New Zealand children are at risk of experiencing life crises; some are more at risk than others, and these are the focus of this inquiry.

The many events that can lead to expected and unexpected crises give rise to the policies and practices revealed in this inquiry. It may seem overdrawn to suggest that the universal event of attending day school for the first time may be compared with the less common circumstance of amputating a child from its family by admission to residential care, or for young persons, prison. However, the basic dynamics remain the same. For children who are nurtured within a climate of dependency and adult concern— parental love—all interruptions and discontinuities in that pattern of care are potential crisis points. When persons other than parents are given the nurturing role, a complex set of questions arise about the needs and rights of those children. For example, the practices of substitute care have in recent years thrown up controversial issues. Adoption practice in particular has raised a discontinuity between the adoptee's need for self-knowledge, and the fact that the searching of origins may cut across the expectations and liberties of the birth mother and the adoptive parents. The state has increasingly taken on the role of arbiter of practices and provider of services in such situations.

Indeed, the state now impinges on the lives of all New Zealand children. It has created legal entities of *children* and *young persons* , who are bound into its civil and criminal jurisdictions, and who are the objects of health, education, welfare and employment policy. The degree of that contact ranges from minimal to absolute. The minimal case is the child whose parents fulfill the law by registering it at birth and entering it as a household statistic in the quinquennial census. Hypothetically, it is possible for that child to have no other direct contact with the state apparatus, and indirect contact only through third parties, such as health or education enterprises, who claim subsidies on its behalf. In contrast, the absolute case is where the child becomes a ward of the state. If that was the result of offending, then a picture of the typical delinquent ward goes as follows:

> He is a boy aged 14 to 16 years, charged with theft. He comes from a large family, where ill health is likely to be present to a greater degree than mormal and where family relationships are unsatisfactory in some respects. His home is in town rather than in the country (and he may

> well have been living away from home). He is likely to be of low average intelligence, making rather slow progress at school, and to have attended school irregularly. It is not likely that the act of delinquency which brings him to court has been the first sign that he has been unsettled. In other words, the danger might have been recognised earlier than it was, as he may well have been aggressive, destructive, very jealous, a bully, a truant, a bed wetter, and subject to sleep disorders, speech defects, anxieties, or fears. (Numbers of children, of course, who never fall into delinquency, show one or more of these symptoms, but the potential delinquent is more than ordinarily prone to them.) He has one chance in three of having been before the Court previously (DSW, 1973: 23).

That portrayal could also have gone on to say that the ward is proportionately more likely to be a Maori than a Pakeha, that if fostered he would experience several shifts of home (Prasad, 1975), and that he has a higher chance of going to jail than someone who had not previously come to notice (DSW, 1973: 27). His official guardian will be a man whom he is unlikely to meet, and his day-to-day life will be in the hands of social workers who frequently change (Hutson, 1981: 4). This child belongs to the second world of childhood, that of misery, injustice and abuse, and dark with deprivation. Its parallel world is that of privilege, where children do not become clients of the child protective services because they enjoy health and security. How the state and, to a lesser extent, non-governmental agencies have dealt with these two worlds of childhood is the crux of this inquiry.

THEORETICAL CONSIDERATIONS

Two levels of theory are applied in this study. The over-arching theory is concerned with demonstrating directions of change in the social formation. It uses the device of *indicative social values* to create samples of time in the technique known as *periodisation.* This is elaborated in this section. Embedded within this approach are two second-order theories that might more usefully be called *models.* The first is a theoretical formulation of the notion of social policy, which is mentioned below but dealt with in full in Chapter II. The

second is a theoretical formulation of the notion of rights, as it applies to children. Chapter III is devoted to that topic.

A theory of change. This inquiry is fundamentally informed by a theory of change that has as its focus the growth of state intervention in the lives of children and the contingent interrelationships between the state, social institutions, social classes, the family, and parents and children as elements of a social system. Although the inquiry is spatially and temporally limited, covering as it does just one hundred and forty-two years of New Zealand life, it does not presuppose social stasis either before, after or during that period. On the contrary, it presupposes a dynamism of social forces and continual change in its elements. It is acknowledged that not all elements can be identified and, even where a relation between elements is constructed, the full extent and nature of such influences have in some cases to be "written out" as constants or as variables of unknown dimension.

To be more exact in sociological terms, the design upon which this inquiry proceeds amounts to a *developmentalist theory*. It is developmentalist because it deals with abstractions of human activity in historical context, while at the same time using structuralist elements which ground the content in the policy, institutions and practices governing children. It is also an evolutionary theory because it supposes that the changes recorded are made up of a large number of diverse influences which act together cumulatively (Harris, 1980: 138, 196). Taking any two points in time, it will be asserted of New Zealand social values that a change has occurred, but that it is impossible to determine precisely when. In this view, it is claimed that there have been changes in the conceptions of social structures but not neccessarily any major change in the structures themselves. Stated in the form of a thesis, it reads:

if social policy for children in New Zealand society in 1840 is compared at intervals up to the year 1982,

then it will be seen that children have been given greater equality at law but remain the object of state intervention,

because the exercise of power in the transmission of values has been

transfered from the family and, to a lesser extent, the established church, to the state.

This, of course, raises the issue of whether the theory is tautological and whether it can match Popper's imperative of *falsifiability* (Popper, 1959: 41). The concern in an exercise of this type is to establish criteria by which such conceptual changes may be said to be significant. In this case, the prime criterion adopted was the degree of difference in a comparison of *children's rights* which might be found at the beginning and the end of the period studied. Other key concepts, which act as types of intervening variables, also form strands of influence, so that judgments about similarities and differences in their conceptual form over time could also be applied empirically. To demonstrate the extent and the direction of the transformation in the position of children, meaning is given to the structural elements associated with that change. To do that requires the use of intervening constructs, such as the notion of *social policy.* So far as possible, these constructs are operationally defined as they occur, to clarify their use in this inquiry. In addition, technical terms are included in the glossary.

Periodisation. Embedded within that design, which is superficially a chronological narrative amounting to an *ethnography* of aspects of childhood, is a device intended to give additional strength to the theory. This device is the *indicative social values* approach which is used to assist in the periodisation of history. This is done by emphasising the principal values of the time that applied to the rights of children. For added emphasis, each period is given a short label characterising those values. Thus, periodisation itself became one of the ways in which shifts in the values surrounding children's rights could be expressed.

Attempts to relate past practices to values and ideologies create special problems. Indeed, in his efforts to relate laws to an ideology in the New Zealand setting, Oliver goes so far as to say:

> Efforts to reconstruct past value-systems are never likely to be satisfactory. It is almost impossible to go beyond the opinions of politicians, parsons and publicists. Undoubtedly, the larrikin had a value-system, but even when one of them writes *Children of the Poor* (Lee, 1934) it is hard to say what it might be. There remain the anxieties and evaluations of the articulate elite—but perhaps that is not too misleading for they after all made the laws and administered them (Oliver,1977: 6).

Three points need to be made in elaboration of the propositions used here. Firstly, the labels adopted to characterise each period represent a scale to describe changes in the criterion of *rights.* As such, they are inventions which appear to be empirically based and are the answer to the question "given what has been discovered about *children's rights*, what can be identified as the essential character of that period ?" The values which the labels represent do not apply to other aspects of social development in New Zealand but the theory and its constructs could be applied in other places and times to make generalisations about social policy for children. The labels arrived at would express the values unique to those circumstances.

Secondly, in addition to the validity of the labels, it is recognised that the dates and span of the periods are problematic. More or fewer periods with different thresholds could be used to similar effect once periodisation is the accepted mode of analysis. However, because shifts in values and norms are generationally transmitted, these can be indicated only in the most general way and allowing for a wide margin of "error". By definition, a transformation from one condition to another can be understood only in retrospect because the change has already occurred. For that reason, the period thresholds are indicative only, one point of many in the dynamism of change.

Thirdly, the values expressed in each period are cumulative and concurrent rather than discrete; as policy incorporates new consensual values, the former values remain as residual options. In this way, a spectrum of diverse beliefs and practices exist simultaneously. A brief description of the periods used is given in the last section of this chapter.

SOURCES OF INFORMATION

The international literature drawn upon in Chapters II and III constitutes a body of knowledge about children, their status and their rights, which puts into context the unique lives of New Zealand children. Two works of that group have had a special influence upon the course of this inquiry. Of the two, Grace Abbott's two volume compendium of documents, *The Child and the State,* first published in 1938, still fulfills its purpose of having ". . . been assembled to make available to the student of social service some of the source material which illuminates our present condition and problems" (Abbott,1947: vii). Although dealing principally with policy for children in the USA, its contents range from extracts of sixteenth-century British legislation through to the Education Act,1944. The second work is Ivy Pinchbeck and Margaret Hewitt's *Children in English Society*, also in two volumes, published in 1969 and 1973 respectively. Their books present a view of ". . . changing social attitudes towards children in English society and the resulting influence on social policy and legislation" (Pinchbeck and Hewitt, 1969: vii) from Tudor times to the Children Act,1948. Without claiming any commonality between their work and mine, it was Pinchbeck and Hewitt who first showed me how the defeats of children can be turned into a triumph for the study of policy.

The New Zealand sources used can be grouped into three main catogories: scholarly studies, official documents and anecdotal and fictional materials. Of the first category, four items have most in common with this present inquiry. Pat Whelan's thesis, *The care of destitute, neglected and criminal children in New Zealand, 1840-1900*, is a carefully documented account of the origins of the state industrial school system, frequently consulted and much quoted in social service histories (McDonald, 1978: 46; Oliver, 1977: 9). The story of the writing of this thesis is worth recording in view of the authority it has assumed in child welfare annals. In the early 1950's, J.H. Robb, later inaugural Professor of Sociology at Victoria University of Wellington, returned to New Zealand to take up a lectureship at the School of Social

Science, then the country's only school of social work. Robb made known to Professor F. L. W. Wood, Department of History, the dearth of detailed histories of the social services and suggested to him that agencies might be well-disposed to opening their archives to graduate students for that purpose. Wood put that proposition to his student, P. J. Whelan, together with an introduction from Robb to the Child Welfare Division, Department of Education, for such a project. Whelan researched and wrote his master's thesis and went on to a career in secondary school teaching and administration and, later, vocational training consultancy. He never used his research professionally, never saw a copy of his thesis after submitting it, and was for over twenty years unaware of its status as a seminal document (Whelan, 1977). I do not know whether the Robb and Wood alliance prompted other studies at that time. I do concur with the view that ". . . the amount of historical writing on the social services is relatively slight" (Tennant, 1983: 6)

The account of child welfare begun by Whelan was continued in chronological sequence by Jane Beagle in her master's thesis, *Children of the state*, submitted at Auckland University in 1975, the second scholarly study closest to the theme of my thesis. While Beagle dealt adequately with the Beck era of child welfare administration, it is my opinion that her attempts to apply American propositions about child welfare were illjudged as they had little relevance to the New Zealand situation she described. Similarly, Seymour, in the third study on this list, shows how Beagle tended to misinterpret the events leading up to the Child Welfare Act,1925. Seymour's monograph, *Dealing with young offenders: the system in evolution*, published by the Auckland Law Research Foundation in 1976, is a penetrating study of legal policy for young offenders from the time of European settlement through to the Children and Young Persons Act, 1974. Its scope and depth will, in time, make it of equal importance to the Whelan thesis for insights into policy for children.

The fourth study is that of Peggy Koopman-Boyden and Claudia Scott, *The family and government policy in New Zealand*, published in 1984, in which they devoted most attention to policy for dependent children within the context of

family policy. That orientation has helped to buttress my thesis that policy for children is different from policy for families.

From official documents, four bibliographic files were compiled as foundation sources for this inquiry. National Archive holdings for the Child Welfare Division and the Justice Department (NANZ) were searched and extracts organised by topic. The volumes of Parliamentary Debates (NZPD) were searched and a list of references to children compiled. The Appendices to the Journals of the House of Representives (AJHR) were treated likewise, and nineteenth-century papers proved to be the richest source of information. The practice then of printing verbatim records of evidence given to commissions of inquiry has proved to be a boon to students. Indeed, given the volume of materials dealing with children in those Appendices, it is hard to see why more attention has not been given to it in the past. Finally, a file was made of extracts from those New Zealand statutes (NZS) that have had any bearing on the governing of children.

It was my hope that anecdotal and fictional materials would be a fruitful source of insights into the way in which children's lives were affected by explicit or implicit policy. To that end, I conscientiously ploughed through countless memoirs, biographies and even early travel accounts and diaries, in the hope of finding some anecdotal gems. I found firsthand accounts and observations by others about childhood in New Zealand to be few and far between, and quite banal and unrevealing. More pertinent written material may exist, but I did not find it. In that connection, during the course of my studies it was difficult to divorce the issues from my own life experience. As a fourth-generation Pakeha born before World War Two, a "Plunket baby", and a member of the class just one cut above those MacGregor called ". . . our idle and vicious classes" (AJHR, 1888, H.9: 8), stories handed down to me from my elders were at first repressed because I had been taught that they lacked scientific validity, i.e., had never been written down or published. A few of these anecdotes are now respectable because I have dared to include them here using the device of referencing them as the Oral History of the McDonald Family (OHMF). Similarly,

as most of my working life has been spent in the business of governing children, I was an actor in some of the practices described and privy to some of the unrecorded policy background. Thus, where the documentation is thin or absent, I have tried to indicate that it is based upon informed speculation supported by personal experience.

For reasons that are easy to understand, stories by the "victims" of child welfare policy can be numbered on one hand. Despite accusations that these are overdrawn, embellished, or just plain mischievous (Lyons, 1972: 63), the stories of James Williamson, John A. Lee, Clifford Keane (Ward McNally), and Gladys Parker (Leigh Bonheur), all State wards in their youth, are no less valid than the liberties with the truth taken by Sir George Grey and recorded authoratitively for all time in Hansard (I am alluding to the reference on the execution of convicted children, in his speech to the Lower House, September 3, 1877). A renewed appreciation of the importance and utility of oral histories and visual archives to supplement the printed page may forestall some of the selfish complaints of the next generation of policy students.

OVERVIEW

In Chapter II, the first section examines the nature, the scope and boundaries of social policy and the second section the connection between social policy and the world of childhood. Chapter III is also in two major sections. Section one examines the development of the concept of childhood in the Western world and gives illustrations of the changing status of children through the ages. Section two focusses on the issue of children's rights in both historical perspective and the state of the contemporary debate on this vexed question. Beginning with Chapter IV onwards, attention is turned solely to New Zealand. The first of the five illustrative periods, Chapter IV, covers policy for children in the period 1840 to 1879. It is contended that during this period, in the context of national growth, experimentation and change, the position of

children changed from being a chattel of their parents or guardians to being the object of protection afforded by the intervention of the state.

Chapter V continues that story for the period 1880 to 1913, when protectionism flourished and, in keeping with the Liberal turn of government, children gradually came to be seen as social capital or social assets. Next, in the period 1914 to 1944, covered in Chapter VI, governmental control over children became entrenched and a new fashion of viewing children, psychological individualism, was foreshadowed. Chapter VII reports and interprets the post-war policy developments in the governing of children and the growth of the therapeutic state from 1945 to 1968. It was during this period that claims for civil rights gained momentum, a broad movement embracing children in the final period, from1969 onwards and reported in Chapter VIII. All sub-themes are pulled together in Chapter IX , the conclusion, which makes the final defence of the thesis. While a nominal finishing point of 1982 was tactically necessary in Chapter VIII, there was still more of the policy story to tell. That is summarised in the Epilogue, Chapter X.

CHAPTER II

SOCIAL POLICY AND CHILDREN

This chapter is in two parts. The first is a comprehensive analysis of the notion of social policy, designed as a preliminary to the second part. That takes up the question of the connection between social policy and children as a social category, and clarifies how these ideas are used in this enquiry.

THE NOTION OF SOCIAL POLICY

Over the last decade, the term *social policy* has been adopted from European sources into the New Zealand political and social science vocabulary with little attempt to specify its meaning or its applied utility. It is of those concepts that is readily accepted by all yet defies widely agreed definition or operational precision. As a subject it appears in the curriculum of university social science departments and it impinges in several ways on the professional lives of human service workers, such as social workers, health professionals, teachers, and social planners. At the outset, it is a subject or topic which is considered fundamental in the education of some human service workers. For example, it is included in the guidelines for basic professional courses laid down by the New Zealand Social Work Training Council (1982). Additionally, it is generally held that human service workers are both the instruments and the critics of social policy. In this sense, their milieu exists because of social policies which promote and sanction their interventions, while at the same time part of their role is to influence policy on behalf of client systems.

It is imperative to recognise initially in any critical examination of social policy that it is a multi-layered concept which does not lend itself to brief or facile definition. It has become at one and the same time both a term of high-order levels of abstraction and common in everyday parlance in the

discussion of social process and organization. In order to arrive at a working understanding of the term *social policy* we must examine its disciplinary aims, semantic connotations, its English language usage, including New Zealand, the relation between ideology and social policy, and its conceptual attributes. Following that, the main points are recapitulated as a forerunner to the second part of this chapter.

Usage and Meanings

Can understanding of social policy be achieved through examining its historical development and its current standing as a subject within intellectual disciplines? Clearly, from its roots in philosophy and some early branches in political studies, it has become a commonplace term in all enquiries about the social order. For instance, moral philosophy may ask questions about human relations in areas such as giving and taking help and the implications for social formations which are predicated upon one model or the other. Sociology might, and frequently does, seek to explore the relationship between kinship structures and the state, an area fertile in social policy issues. The physical sciences have begun to develop, in conjunction with the philosophy of science, lines of enquiry about the social import and impact of scientific paradigms and their technologies, which broaden even further the boundaries of social policy studies. On this problem of the confusion of topics and disciplines, Koopman-Boyden and Scott suggest that effort made to clarify interrelationships is rewarded by inter-disciplinary synthesis (1984: 21-4).

Two developments are apparent as a result. The first is that, while every discipline has been building its own unique conceptualizations of the social order, the term *social policy* has emerged wherever attempts are made to relate those ideas to the construction of a collective reality. The second development is that, while it may appear that the notion of social policy has until now belonged to every domain in general and to no single one in particular, schools of study are assuming proprietary rights by taking social policy as their area of

interest.

Part of the answer to understanding social policy may be given by looking at the various meanings of the two words separately. In Popper's dictum, the best definitions in science are properly to be read from right to left rather than from left to right or, put another way, the label invented to describe a phenomenon is a handy substitute for its long description (Popper,1966). The longer and more inexact that description becomes, as is the case with *social policy*, the less its short label has utility.

It is generally accepted that *policy* means a set of guidelines for action, either a plan and justification for current operations or a declaration of intent. Its relation to the family of words deriving from the root *politics* has given it an overlay associated with government and governing and, latterly, with management and administrative behaviour in all sectors of activity. By itself *policy* has a vigorous semantic power and utility in everyday speech. It has widespread application and tends to take on the affective colouration of its context and its possessive adjective in compound usage. For example, *penal policy* will for most people have very different connotations from *transport policy.*

In contrast, the word *social* embraces a wider array of meanings grouped around the phenomena of gregariousness and collectivities. Some clues to its coupling with *policy* lie in the history of the expansion of state control over its citizens. Concurrent with the rise of the interventionist state in nineteenth century Europe was the growth of a predominantly economic model of humankind. From matters of defence of the realm, the state became the instrument through which economic stability and growth could be enhanced (Hill,1976: 23-9). The precepts of utilitarian theory permitted governments to act "for the greatest good of the greatest number", which in many instances meant policies that acted to control or assist citizens for collective (public) benefits while at the same time coincidentally conferring individual (private) gains. Forced collective action on sanitation and public health in urban Britain during

the nineteenth century is the prime example of an effective and generally popular governmental health policy.

British versus American Traditions

In the English-language literature on the study of social policy, frankly divergent traditions have emerged on opposite sides of the Atlantic Ocean. In general, British Commonwealth countries have tended to follow the British formula or variations of it. An examination of those differences can help to clarify the shape and nature of the notion of social policy as well as providing a useful comparison for the student (Bean and MacPherson, 1983). In Britain, social policy as a field of intellectual enquiry was nurtured within a school of thought informed largely by the tenets of Fabian Socialism. That approach has been described as "piecemeal social engineering" or the idea of "welfare as social reform" (Mishra, 1981). Its emergence and distillation is attributed principally to Titmuss (1974; 1976; Reisman, 1977) who was one of the first to give a plausible account of the critical influence ideology has on the shape of welfare systems. Such a formulation brought contrasting normative theories into sharp relief and set up an intellectual and inter-disciplinary argument which will continue so long as economic models and social welfare models of humankind remain opposed. Critics of the Fabian approach have done much to sharpen the theoretical base of social policy study. In recent years, a revitalised approach to social administration has resulted in the questioning of earlier assumptions

> . . . that social policy is always in intention and outcome benevolent, that the expansion of social services is necessarily the best way to tackle social problems, that the notion of 'social problems' is objective rather than problematic, that social reform can be achieved through reformist state action and so on. The traditional social administration, it is now widely recognised, was—or is—itself an ideology and needs to be dissected and exposed like any other (Wilding, 1983: 10-1).

In essence, the social administration school believes that all policy is

social policy, that is, it has social consequences. This approach to policy is known as the universal model, one which requires a social system to be considered in its totality. At the same time, it legitimises interventions in any part of the system to effect policy goals. By contrast, the economic school, represented by conservative economists such as Hayek and Friedman, believes that social policy as governmental intervention must act as a *handmaiden* to economic goals and as a measure of last resort. Known as the particularistic model, it considers sectors of the social system to have competing interests, and it permits interventions in any sector without regard to others.

Until a decade ago, it was relatively easy to classify American studies of social policy as ideologically unified around economic and particularistic models in keeping with the dominant anti-collectivist view. Thinking, writing and teaching about social policy in that country tended to use an approach that equated social policy with *social welfare policy,* or the study of the institution of social welfare. A common justification was that scholars prefered to ". . . skirt the conceptual swamp of social policy, public policy, and social welfare policy distinctions" (Gilbert and Specht, 1974: 4). In practice, it was considered educationally unsound and professionally hazardous, even by those whose political loyalties were not in doubt, to publish or teach a study of social policy which critically examined ideological influence (Perlman, 1969: 12-3). Indeed, it is important to note that the anti-communist hysteria of McCarthyism continues to have a subtle influence upon free intellectual discourse in the field of social policy (Galper,1980: 3-15). In such a climate, it has been acceptable to theorise about and to investigate remedies for social ills. The well documented "paper war on poverty" is a case in point in which massive research grants created well-paid employment and established reputations for the intellectual elite but had negligible effects on the problem itself (Furness and Tilton,1977: 162-4). It has not been rewarding to enquire into the systemic causes of inequality because it is a necessary and fundamental consequence of an individualistic, competitive ideology.

Over the last two decades, the political easing evident through the

programmes of successive Democratic administrations has led to a widespread acknowledgement within the U.S.A. that it has adopted a form of welfare state (Anderson, 1978). The result has been a greater freedom for scholars to discuss and publish accounts of social policy which are not solely predicated on the assumption that there is one inviolate model of the social order. At the same time, institutional protection has been afforded in the growth of research centres devoted to social issues, although the risk remains that individuals may pay the cost if their views are overtly proselytizing and collectivist. These centres are for the study of social policy in the broadest possible sense.

A divergent terminology is what most clearly distinguishes British from American social policy studies. In Britain, it is assumed that social policy will entail an examination of political legitimacy, choices and decisions. In the U.S.A., social policy is not a unitary concept, except where it is understood to be synonymous with *social welfare policy*, or the institutional arrangements about welfare. Consequently, courses offered in universities under the label *social policy* are about practices in social service sectors, such as income maintenance, services for the aged, children and so on. Similarly, that most British of terms, *social administration,* has in America exclusively come to mean the administration of social service agencies and programmes and has been aligned more to organizational and management studies than to ideological considerations.

New Zealand Studies

The term *social policy* made a late appearance in the New Zealand literature. Although between 1900 and 1975 writers gave much attention to legislation of a social nature and to specific statutory provisions, this appeared under blanket labels such as "the social welfare state" (Condliffe, 1959), or "social welfare policies" (Scott, 1955). By the 1960's, courses in social administration, or social policy and administration, were being offered at New Zealand's sole school of social work at Victoria University of Wellington. One of the school's part-time lecturers in those subjects, C.A. Oram, an Assistant

Commissioner of Social Security, produced his lecture series as a book in 1969, New Zealand's first volume on this topic. Oram wrestled with definitions of social policy taken mainly from the British viewpoint and although much of that would now be regarded as passé, it did encapsulate the spirit of the times.

Only after 1975 did the term social policy begin to appear with any frequency and authority. In 1976, the *Report of the Task Force on social and economic Planning* recommended the setting-up of a cabinet committee on social policy as a kind of twin to the committee on economic policy. That task force, whose report liberally uses the term social policy without any attempt to define it, was the embryo of the New Zealand Planning Council, established in 1977. The authoritative use of *social policy* became commonplace. Indeed, a working party of the Planning Council addressed itself to the issue *Who makes social policy?* and published a monograph of that title in 1982. It decided the task of definition was insurmountable and adopted only the premise that ". . . the aim of social policy is to promote the well-being of people in the broadest sense" (NZPC, 1982: 8). Similarly, Easton adopted a taken-for-granted approach to the term social policy in his 1980 publication, despite it being the key word of the title *Social policy and the welfare state in New Zealand.* In a work of Easton's kind, the meaning becomes much clearer if the plural of *policy* is substituted, for his review covered *policies* of a social nature within a discussion of the welfare state from the position of an economist.

The first systematic attempt to unravel the knots of social policy in a New Zealand context was made by Wilkes and Shirley (1984b), who proposed four basic principles that ought to characterise a study of social policy. These are:

1. A concern with the broader context of policy, which takes account of the economic (especially class) forces in society, as well as the political relations between social classes, and the ideologies which are attendant on these processes.

2. A concern to explain policy structurally, in terms of the determinate systems of society, as well as the dynamic forces of individual and class agencies in which people can intervene with policy matters.

3. Consideration of the historical context in which policy develops, including the major social groups responsible for specific conditions.

4. An orientation towards theoretical research, without which, as in the case of many so-called Social Administration studies, little interpretation can be made of policy events. In this regard, the assumptions and theories of a given approach should be made evident, so that a full appraisal of the study can be made (Wilkes and Shirley, 1984b: 42-3).

In this view, the underpinnings of social policy lie in the theoretical-intellectual mode of conceptualising the social order, what we have come to call *ideology.*

Ideology and Social Policy

Given the general suspicion of the role of the state in nineteenth-century Europe, its activities had to be justified on instrumental grounds through what might best be called a *particularistic* approach to policy. It is here that ideological features show the greatest divergence and provide the most powerful explanation for the creation and perpetuation of the notion of social policy as a legitimate but separate function of certain styles of government. As early as 1851, the term social policy made its first appearance in the political studies literature, in Germany. By 1873, a Social Policy Association had been formed there for the scholarly study of politics with an emphasis upon planning for social cohesion and solidarity (Cahnman & Schmitt, 1979). What was being proposed was a *universalistic* approach to policy through which all state intervention would be guided by those banner goals.

Since that time, ideological battles over the social order have been conceptualised as divided into distinct camps, each of which adopts a unique interpretation of the notion of social policy. One such analysis, that of George and Wilding (1976), suggests that four major ideological positions on social policy represent current political theory. Firstly, there is the position of the *anti-collectivists.* In this view, drawing upon the organic, Social Darwinist model of society, humankind is fundamentally a competitive species, and social

progress is enhanced by the unfettered exercise of individual initiative and enterprise. The role of the state is restricted to the maintenance of external and internal defence of the social order; social policy is of a controlling nature.

The second position is termed the *reluctant collectivists.* This represents the liberal, Utilitarian position in which the state is permitted to intervene provided some greater social benefit can be demonstrated. While private benefits may accrue, the intent is to promote competition without disharmony and without absolute exploitation of the poor. As with the *anti-collectivists*, social policy is a controlling force but in this case with a benevolent stance.

Thirdly, there is a body of political opinion which represents a middle ground between the reluctant collectivists and the collectivists or Marxists. This position George and Wilding term the *Fabian Socialists* (1976: 62). Its principal feature is the belief that capitalism can be transformed without revolution into a welfare society through state intervention and redistribution. Thus, the idea of a manipulative approach for social policy is central and transcends the sectorising or particularistic model demanded by the free enterprise ideologies. Fourthly, and finally, is the *Marxist* position. This proposes that it is the function of the state to be the arbiter of social values and to ensure that welfare is part of the fabric of everyday life. That ideal begins with the move to collective ownership of the means of production. Distribution and consumption are also regulated for the common good and the polity acts to increase social solidarity by collective consent to share risks and rewards. In this view, the idea of social policy is irrelevant, because all policy is social in nature.

Two benefits have occurred from these types of analyses. First, at the conceptual level, making explicit the connection between social policy and ideology has had a liberating effect on the study of social welfare and the social services. The normative theories which buttressed social welfare policies have lacked clarity, explanatory power and relevance, and have tended to confuse social values with social facts (Tulloch, 1978). Titmuss (1973) gave a lead with his model-building approach in which he suggested that most of the values and

choices inherent in social policy issues could be expressed in three contrasting ideologies: the residual model, the industrial achievement-performance model and the institutional redistributive model, equating roughly to the anti-collectivist, reluctant collectivist and socialist stances respectively. Prophetically, he wrote that "Many variants could be developed of a more sophisticated kind" (1973 :31). Close to home, two examples stand out, those of Tulloch (1978) and Wilkes and Shirley (1984 b).

Secondly, by making the role of ideology manifest, students are reminded that the outcomes of social policies are social inventions and not "natural" or inviolate constants. The question then becomes, not whose needs are being met, but rather as Wilkes and Shirley put it, whose interests are being served? What gives social policy its necessary character is that in all circumstances, a causal explanation is implied through the specification of means and ends; something ought to be done, or not done, because it is in the interests of a social sector and thus, ideally, in the interests of the society.

An ambiguity arises, however, when different ideological positions agree on similar means to achieve different ends. For a case in point, the contemporary debate on the welfare of ex-nuptial children born to mothers under sixteen years of age highlights this. Aligned on one side is the progressive view that the welfare of the child shall be paramount, but within that viewpoint factions occur over the means by which that criterion might be established. Some believe that the maternal bonding rule overrides all other considerations, some that technical experts can make case-by-case decisions, while others believe that compulsory separation and adoption gives the best possible outcome. Set against these viewpoints is the more conservative attitude that compulsory adoption of such children would reduce state expenditure to support the child and its mother and fulfill a currently unsatisfied demand for infants from the deserving childless (Koopman-Boyden and Scott, 1984: 214). Unlikely coalitions may form and reform, which start from different theoretical premises and expect different outcomes but which converge in agreement at some operational points, e.g., on the adoption process. Thus, to

the ambiguity of specification can be added an ambiguity of process in delineating social policy.

Conceptual Attributes

It is not surprising that confusion surrounds the notion of social policy, for it concerns ideas, beliefs, values, fields of study, plans for action and action itself in a complex interplay. Some conceptual order can be imposed by categorising these elements into discrete attributes. At its most general level, social policy can be analysed on two major dimensions. On the one hand, it has an intellectual-institutional dimension, and on the other, it has a theoretical-practical dimension. When these dimensions are crossed, four distinct attributes of the notion of social policy can be identified. This relationship is shown graphically in Table 1 below. Essentially, what distinguishes these attributes is the level of abstraction, which becomes the parameters applied to any inquiry .

TABLE 1

A four-fold table of social policy attributes

	INTELLECTUAL	INSTITUTIONAL
THEORY	1 abstractions on the meaning of the term with view to development of theory	2 application of theory to the arrangements which realise policies
PRACTICE	3 underpinnings of the operations in conceptual form	4 descriptive level of the policies envisaged or in operation

By way of illustration, the construct of human dependency is used as an

exemplar. At the highest level of abstraction, cell 1 in Table 1, questions of moral philosophy might be applied to the dependency relationship between kin and strangers and to the reciprocity relations between parents and children. A normative theory might be developed which specifies the moral rights and obligations of dependency situations. Moving to cell 2, it becomes an examination of social formations such as family life and structure to test the empirical evidence, *what is*, against the theoretical imperatives, *what ought to be*. Both cells 1 and 2 lie at the pre-active stage and decisions about potential influence remain a political choice. Shifting to the practice dimension, the justification for a policy will be spelt out in cell 3, for the present case perhaps beliefs about dependence and independence which specify the management of parent-child separation in regard to schooling, pre-school experience and family break-up. Finally, in cell 4, specific practices which exemplify human dependency issues can be described. These may or may not be related back to a well-formulated theoretical dimension or ideology.

Thus, through this classification of attributes, the points at which any elaboration of social policy begins and ends can be established. Because of the complexity of the concept, however, that still lacks the precision required to understand fully its scope and limitations. What is required in addition is a reflexive approach, to enable a study of the values and beliefs informing policy and their dialectical relationship with empirical reality (Tulloch, 1978: 74).

The Utility of Social Policy

The discussion thus far raises some fundamental questions about the utility of the notion of social policy as a field of study which must be resolved for the purposes of this enquiry. Broadly, these distill into two major questions. Firstly, should the notion be abandoned because of its ideological overlay, and replaced by more affectively neutral concepts? Secondly, if it is going to be employed as a conceptually useful term how can greater precision in its use be effected? Each of these is dealt with in turn.

Recognising that the early use of social policy was to describe a new wave of political thought, designed to emphasis societal cohesion and solidarity, it is also important to remember that it has been incorporated into functionalist theory as part of the equilibrium mechanism. In those formulations, social policy acts in a subordinate, counter balancing fashion dealing with the non-productive and the economically dependent. Its very existence leads to the presumption that economic affairs are more important to the state and, in turn, that an economic model of humankind is the "natural" (or divine, in the Puritan view) order of the cosmos. The adoption of a particularistic approach to state intervention is a necessary character of capitalist society because of competing claims between owners and non-owners.

The positive connotations attaching to social policy disguise the fact that its operations in capitalist society are both controlling and tension-reducing. Most interventions have nothing to do with justice, fairness or human dignity although that impression may often be conveyed either because universal benefits are claimed—state sponsorship of education, for example—or because the policy ostensibly makes gifts from the haves to the have-nots, from the independent to the dependent. Moreover, the more sinister outcomes of state control in the interests of the dominant class are legitimised, as Wilkes and Shirley (1984b) point out, as being " in the public interest". The programme of cultural genocide practised by successive administrations in the New Zealand state school system which banned and punished the use of the Maori language was, after all, no more than a social policy in action.

In this thesis, I adopt the principles enumerated by Wilkes and Shirley (1984b), listed above. This requires that the values underlying ideas about social policy are made explicit. Theoretical considerations become critical at this point because the paradigm chosen to make a construction of social reality pre-determines the process and therefore the outcome of the inquiry.

On the second question, it was observed earlier that social policy is a concept readily accepted but without an agreed definition. It is rich in meaning

and has a positive, humanitarian flavour associated with banner goals such as liberty, justice and equality. It conveys the sentiment that its aims are to promote well-being. At the same time, it can express an idea, a principle, a field of study or a planned intervention. It belongs to no one discipline, yet a new field of study is being created around it. It means something different in Britain and America, and probably different again in New Zealand. Incontrovertibly, all legislation and governmental activity has human consequences to some degree. The pressing task in the long term is to develop a language which differentiates between discussions on the *social impact* of state policy and those which concern *social formations*. As a beginning, the term social policy should be used sparingly and to cover only the field of study. Enquiries into specific areas should avoid the use of *social* in favour of the name of the unit of analysis. At the level of social provision, talking about *policy* for the aged, or aged care policy, or whatever is the focus for the inquiry, cuts across disciplinary boundaries and must lead to greater conceptual clarity. That is the practice used in this enquiry.

CHILDREN AND SOCIAL POLICY

To restate the contention of this thesis, policy objectives are founded on the prevailing ideology and dominant social values. No one would doubt that the New Zealand state has a policy for children, but justifiably most would be hard-pressed to describe it. That is understandable because there is no one single policy but many, and their inter-relationship defies adequate everyday description. In common with other sectional policies, that for children is an expression of the political will, indicating how they are to be governed. It is both the plan to get something done and the instrument for doing it. It covers items as diverse as high-order abstractions, such values, principles and statements of rights, down to concrete and specific operations, such as rules and regulations. Moreover, as Hall *et al.* (1975: 23-40) point out, policy objectives may be made explicit by government or implied by non-intervention. Similarly, government agencies may take a leading role, may empower private or voluntary agencies

to intervene, or may work in collaboration with non-governmental agencies to achieve policy objectives. Embedded within explicit sets of overarching social policy are a multitute of subordinate policies. These are not simply hierarchically arranged, but have overlapping and shifting boundaries. They range across complex societal institutions and involve social units of all sizes. At times, the resultant practices may be contradictory or ". . . consequences may be different from those which are intended. When several policies are viewed together, the goals and objectives may be found to lack coherence and consistency" (Koopman-Boyden and Scott, 1983: 13).

Addressing the question of areas of conflict and disagreement in policy for children, Packman identified five areas where differing interpretations arise (Packman, 1980: 9-20). The first of these arise from the inherent contradictions in the guidelines to be used for policy, such as the *Universal Declaration of the Rights of the Child.* On the one hand, it extended freedom as a right, and on the other it sought to make education compulsory. The second area concerned disagreements over a common understanding of the nature of childhood. Packman suggested that outside of a limited area of agreement between policy makers there is a larger area of disagreement on similarities and differences, on need, and on status. The third closely related area of potential disagreement lies in what is appropriate at each stage of development, given that childhood covers a multitude of states of being. The fourth area is the difficulty of differentiating between needs and wants of children and deciding priorities when they are in conflict. Fifth, and finally, Packman asserted that the most crucial and contentious problem of all in determining policy is the tension between the child in its own right and the child as a member of its family (Packman, 1980: 9-11). These are recurrent issues throughout policy studies for children, and this study does not escape them.

Children as Policy Objects

Policies governing children can be crudely categorised in two different dimensions. Firstly, there is a *specificity* dimension, ranging from those items

where children are the central object, through to those in which children are the indirect object. For example, criminal offending legislation specifically spells out penalties to protect children from abuse, and indirectly covers them as victims of all other criminal acts. Secondly, there is a *universality* dimension. Some policies are targeted at all children without exception, others only at children who fulfill certain criteria. In the area of income maintenance, for example, every New Zealand child attracts payment of a benefit to its caregiver but a special benefit is payable to a small number of orphans.

The objectives of such policies can be broken down into five main areas. These are population features, socialization, nurturance, protection and the control of children, shown with their corresponding policy areas in Table 2. As

TABLE 2

Social objectives and policy areas governing children

	Social Objectives				
Policy areas	Population	Socialization	Nurturance	Protection	Control
Taxation	ø	.	.	.	.
Fertility	ø.	.	.	.	
Civil regulation	ø.	.	ø	ø	
Family	ø	ø	ø	.	.
Education	.	ø	.	.	.
Religious	.	ø	.	.	.
Health	.	.	ø	.	.
Income maintenance	.	.	.	ø	.
Housing	.	.	ø	.	.
Family dissolution	.	.	ø	ø	.
Labour/employment	.	.	.	ø	.
Personal social services	.	.	ø	ø	ø
Child welfare	.	.	.	ø	ø
Juvenile offending	.	.	.	.	ø

this inquiry demonstrates, planned governmental intervention to realise these

social objectives in regard to children is mostly a twentieth century phenomenon. Each is examined briefly. Governmental population objectives arise from issues of limits or incentives to growth, whether these will be achieved by inward or outward migration or fertility programmes, and consideration of the consequences of current and projected age distributions. Monitoring and evaluation techniques based on population surveillance may also have a control element, such as the requirement for compulsory registration of births. Socialization has to do with ". . . the life-long process of inculcation whereby an individual learns the principal values and symbols of the social systems in which he [or she] participates and the expression of those values in the norms composing the roles he [or she] and others enact" (Mitchell, 1968: 194). Nurturance concerns the provision of basic human needs. Protection as an objective aims to confer rights to adequate socialization and nurturance, while control objectives seek to maximise pro-social behaviours and to forestall or minimise anti-social behaviours.

Most of the policy areas listed in Table 2 will be mentioned in this inquiry. One or more policy areas can be used by government to achieve the desired objective. Earlier, the distinction was made between the universalist policy model and the particularist model. In relation to this present illustration, a universalist approach would legitimately intervene in any policy area, or create new policies to fulfil objectives. Consequently, there would be a greater chance of an explicit and coherent policy being employed. Adherence to a particularist model denies the legitimacy of cross-area interventions and is usually associated with minimum governmental control. There is, of course, never any guarantee that either approach is beneficial to the targeted group.

Studies of Policy for Children

Before the nature of policy studies about children is examined in the New Zealand context, specimen studies from three different countries, France, the USA and England, are presented to see what insights they give on the matter. These are intended neither to act as a comparative base, nor to summarise

policy in those countries. The value to this inquiry of each of these very different studies lies in the methods by which policy issues have been conceptualised and presented. Each one is briefly described and their similarities and differences surveyed.

France. The study chosen was Meyer's *The child and the state*, first published in French in 1977. His thesis was relatively simple—and sardonically couched. Using an historical framework to chart changes in the French family, Meyer believed that the intervention of the state had robbed communal life of its sociability and the family—fathers in particular—of responsibility for children.

> In the face of social diversity, it was necessary to decide upon a uniform compromise and impose it: the child was one means of doing so. Its temporary or permanent removal, or the threat of its removal, was a weapon the State and the philanthropic societies could use to impose their morality. The history of paternal punishment shows that two issues were at stake: it was not a case of educating children left running wild . . . but of replacing the practical and individual education provided by the child's environment with an education that was uniform, sophisticated, universal and geared to the production process. But at the same time the aim was to turn the family into a stereotyped unit, one that could consequently be regulated and disciplined. Through the social enquiry, that manifestation of the State's appropriation of the the power of policing families (or more elegantly put, of their power of self-regulation), a whole system for regulating families was introduced (Meyer, 1983: 35).

Examples of over-bearing state intervention in the lives of poor or inadequate families were given in a series of field observations and official records. What made it possible for the state to colonise family life, says Meyer, was its appropriation of public spaces. He postulates that by creating communication networks which are solely for vehicles, people have been banished from public places, accentuating alienation and making it easier from state agents to deal with "irregular" children and families in isolation. Meyer gave this pessimistic summary:

> In monopolising the organisation of communal life in order to establish officially what is good for society, the State is involved in a constant work of pauperising sociability—of exterminating society. The elements

> that provisionally led to the constitution of the family, have now been superceded by the atomisation of that unit, at once so weak and yet still too inpenetrable. Thus any attempt to produce a communal life outside the field of institutions, any attempt to regain initiative, any dissidence against the universe of protection, every effort to enable society to reclaim the role of actor and do its own gardening, constitute so many manifestations of resistance to the possible destruction of scoiety by the State, so many instances of opposition in face of this outrageous possibility becoming an inevitable doom (Meyer, 1983: 121-2).

USA. Steiner's study *The children's cause*, published in 1977, sought to explain why in his view children did not fare as well from American governmental policies and assistance as they might. This study was connected with his earlier findings that divisiveness of public relief politics was attributable to the growth in number and costs of dependent children (Steiner, 1971: 314-7). He took as his starting point the observation by Grace Abbott that "All children are dependent but only a relatively small number are dependent on the state" (Abbott, 1938, vol.II: 619). In a broad-ranging survey of political and state machinery, of advocacy for children with special needs, and programmes mounted with federal assistance, Steiner concluded that Abbott's view still held true.

Steiner was essentially concerned with the process whereby welfare and services become bureaucratised and establish their standing in all competing claims for federal assistance. He concluded that the lobbyists for the *children's cause* used inappropriate arguments, little empirical evidence of the degree and incidence of deprivation, and failed to make a convincing case to politicians. Many programme initiatives were the result of haphazard assignment, largely because the array of items put forward was limitless and amorphous. Until those objectives can be made more persuasively, Steiner concluded, the only successful claims would be those which concentrate on ". . . ways to compensate demonstrably unlucky children whose bodies or minds are sick or whose families are unstable or in poverty" (Steiner, 1977: 255).

England. *The child's generation*, by Jean Packman, 1975, dealt with child care policy in England over a thirty-year period from, as the sub-title

related, the Curtis Committee on the care of children in 1946, to 1974 and the after-effects of the recommendations of the Houghton Committee on adoption,1972. When the Curtis Committee was deliberating, *child care* meant interventions on behalf of dependent children. By 1974, it had been much broadened in scope to include all atypical children for whom the state, through local government, assumed some responsibility. Packman's study was tightly structured around an analysis of the interplay of legislation, administrative machinery and practice, as observed through the archives of two local authorities with responsibility for child care. Her method was to isolate the intentions of policy directives and to follow these through as they were implemented in practice. Examination of one sector of the personal social services had, in her thesis, implications for policy issues throughout the personal social services because they encapsulated social values and attitudes, and changing relationships between the parties concerned.

> The processes by which child care policy has developed over the past thirty years are also of more than specialist interest. They demonstrate the constraints and opportunities of a legal framework; the interaction between central and local government; the influence of practitioners as well as official 'policy-makers'; the effect—or lack of it—of research, pressure groups and scandals; the circular relationship between needs, demands and service responses; and the vital, sometimes fraught and sometimes fruitful partnerships between local government officers and their council members. How social policy evolves generally may be illuminated by looking at the way in which one small segment of social policy was shaped (Packman, 1975: 2).

Three approaches to policy. The studies reviewed have the common theme of the relationship between the state, families and children. To a greater or lesser extent, they each used an historical survey as the basis for mapping change in policy and practice. Each concentrated on the position of children as a group with special claims, and the same general picture emerges that children are a generally powerless stratum. Similarly, those who argue for them represent a diversity of opinions, frequently divided on ideological lines over the rights and responsibilities of families and individuals. In one way or other each supported the proposition, in Packman's terms, that policy developments for

children do not stand alone, but relate to broader changes and issues in the welfare system (Packman, 1975: 2).

A classic dilemma was identified in all three studies: society wants the state to guarantee the maximum possible protection for children while at the same time according the greatest possible freedom to families and children to order their own lives. How such policy is to be interpreted rests with the brokers and social workers executing it in practice. That dilemma was forcefully illustrated by Packman in the public reactions to the scandals which led to reviews of child protection work. She showed that when policy altered to allow courts and child protective agencies to treat children on a "best interests of the child" philosophy, more children than ever came into care. But despite greater activity, the system still failed the child through misguided attempts to preserve family ties (Packman, 1975: 155-76). Meyer also looked at child abuse scandals and concluded that they occurred because social workers viewed the family economy as more important than the child. "It then sometimes happens that, in this war against irregular families, the hostage dies, because the resistance of children is not inexhaustible and the social services' obsession with the family had prevented them from seeing that the critical threshold had been reached" (Meyer, 1983: 80).

Even allowing for national bias, the studies diverge sharply in their underlying views of the state. Meyer used the case of children in an allegorical sense to portray his disenchantment with directions of French society. In his formulation, the state had taken on a character above and separate from competing classes of French society and does not suggest that it was an exercise of power by a dominant elite. Indeed he thought the upper classes as much victims of the ubiquitous state as any other, and that they had lost the battle which Steiner saw at the heart of the issue in the USA. There, in Steiner's view, the analysis of policy for children must be considered in the fundamental tension between private families and public responsibilities. That situation arose because child rearing is the least regulated important aspect of American life. Thus, the situation becomes a contest between competing claims

and the degree to which the altruistic state can be convinced that intervention is necessary to compensate for diswelfares. Packman's study gave a view of a state executive seeking to create a climate in which child protective services could respond to local need. Over the thirty years analysed, a kind of cyclic policy response became evident as serious events heightened pressures on policy makers and new resolutions resulted. She hastened to add that a cyclic view of policy by itself was insufficient and would not explain the complexities of policy response and reaction (Packman, 1975: 191).

From these points of agreement and disagreement, three diverse views of the relationship between the state and children were evident. There was the claim by Meyer that the state was repressive of the human spirit, and its hegemony over family life so entrenched that it was destroying the very society it sought to control. The view given by Steiner of the US federal system was of a "sleeping giant": through its inactivity the state crushed that of which it was ignorant, yet it was capable of productive responses if prodded in the right way. The two-tier state depicted by Packman was clearly a pragmatic, politically aware system seeking to reconcile the tension between the public and private, yet at the same time gradually extending childhood dependency and services in keeping with the values of the wider society. Varied as they may be, these formulations support an inescapable influence of the state over the lives of children. Of the three, the topic and theroretical orientation of the study by Packman makes it the most informative for this inquiry.

Children and Family Policy

Despite the growing intrusion of the state into the realisation of the objectives listed above, the New Zealand family remains the social unit with that prime responsibility. Adults are still expected to reproduce, to socialise, nurture, protect and control their off-spring, more or less with the help of a kinship network. Throughout this inquiry, very little reference is made either to parents or to families. Where these are mentioned, they are deliberately given a second-order importance to children and little effort is made, except in a

generalised fashion in Chapter III, to put children into a family context. Principles and ideas from family policy have been incorporated into this policy study of children. This strategy tries to demonstrate two central elements of this inquiry, the claim that children ought to be considered as a policy interest group in their own right, and the multi-layered nature of social policy. Such an aim, which poses complex intellectual issues and strikes right to the heart of the criteriological problem, is justified more fully below.

Defining the family out, as it were, is not to deny that parent-child relationships remain fundamental and critical human activities. Those practices in detail are not germane to this thesis. The idea of family policy, however, which exists as a part of policy studies in New Zealand, must be confronted and the relationship between it and policy for children is now examined.

New Zealand origins of family policy studies. The roots of a recent start to family policy studies can be traced to the National Development Council structure established by government in 1968. The last sector council to be established within that framework was the Social Development Council (SDC). Two people who served on SDC working parties, Brian Easton and Peggy Koopman-Boyden, are of the opinion that a discernible New Zealand family policy study dates from the work done by those groups in the early 1970's and the SDC Working Party on Family Policy set up in 1976 (Easton, 1981: 95; Koopman-Boyden and Scott,1983: 150-1). Papers prepared by the early working parties were not released for public consumption until 1977, and then only in Easton's view, in a form to make them more palatable to the public (1981:95-6). He also observed that "Meanwhile, academics had increased their attention to family policy issues. . . . and from 1974 papers on family policy issues were presented each year, at the conference of the New Zealand Sociological Association, for instance, and to similar organisations" (1981: 96).

It has been said of SDC that:

With such publications as *Bringing Up Children in New Zealand*

> (1977a), *Family Finances* (1977b), *Housework and Caring Work* (1977c), and the Families in Special Circumstances series on *Migrant Families* (1978a), *Solo Parent Families* (1978b), *Large Families* (1978c), *Stepfamilies* (1978d), *Families with Special Caring Responsibilities* (1979), along with *Families and Violence* (1980), it considered a wide range of issues. The Social Development Council's final publication in the series, *Families First* (1981), called for the government to give higher priority to policy decisions supporting families, through the development of a more explicit family policy, coupled with the design and implementation of evaluation systems to ensure that policy objectives were being achieved (Koopman-Boyden and Scott, 1983: 150-1).

Two approaches to family policy. Apart from the publications of the SDC and the New Zealand Planning Council, the work of Easton (1980; 1981) and of Koopman-Boyden and Scott (1983), comprise the only attempts to construct a family policy orientation. When New Zealand social policy studies were reviewed in the first part of this chapter, it was noted that Easton used the term social policy with no attempt to define it. In his earlier book, he gave this impression of family policy and its fortunes:

> Family policy is the overall term for society's strategy towards the rearing of children. As well as covering legal arrangements and education, . . . and atypical family situations involving disability, unemployment, or a single parent . . . family policy is economic policy directed towards the two-parent family. . . . Family policy towards this typical family has been largely neglected. . . . As recently as 1972 the Royal Commission on Social Security devoted twenty-five pages to 'Assistance to Families", and twenty-one pages to assistance to solo parent families, yet it may have been the Royal Commission's neglect of children which has lead to the rise in public concern about family policy since 1972 (Easton, 1980: 103).

And in his later book, he wrote "If provision for age was a major concern of the 1890's, why was provision for children, i.e. a family policy, not evolved at the same time?" (1981: 25) Similar usage throughout his writing leads to the conclusion that he believes the aim and focus of family policy to be issues surrounding children.

A much more elaborate formulation has been made by Koopman-Boyden

and Scott, in their 1983 book devoted to the topic of family policy in New Zealand. After a review of the development of the notion as a scientific study, they define it as

> . . . 'the set of governmental programmes, laws and institutional arrangements which determine how responsibilities for the economic support and nurture of dependants are shared among the family, the community and the state, including the assignment of caring roles within the family' (1983: 20).

They go on to give their view that:

> The objectives and policies associated with explicit family policy have been in use since the early colonial period, but explicit family policy objectives have rarely been addressed to the family as a unit. As in many other countries, policies for individuals have more commonly been employed than policies for families, although Easton (1981) makes a strong case that a more explicit family policy can be identified with the second and third Labour governments. While New Zealand has had a diverse collection of government policies, it has never had an explicit family policy. The state's ideology of the family has remained largely traditional emphasising: the male breadwinner (1982 tax cuts disadvantaged low-income, usually female, workers with high-income spouses); children cared for at home (little support for child care outside the home); and greater priority to the old over the young (the higher levels of support given to persons over 60 years as opposed to low-income families with children). Thus governmental policies for the family have largely provided opportunities to reinforce traditional structures which promote the dominance of men over women, parents over children, and the old over the young.
>
> These policies have masqueraded under a host of other labels, including women's policy, children's policy, tax policy and employment policy (Koopman-Boyden and Scott, 1983: 170-1).

Koopman-Boyden and Scott acknowledged the existence of the notion of children's policy but did not attempt to define it. They thought that it might, along with women's policy, be more amenable to political influence, especially through the medium of pressure groups. Moreover, they go on to say that conflicts can arise between the needs of children and those of parents, citing day care as one example where the rights of parents to work and obtain assistance with their children may conflict with children's right to receive good care (1983: 18). Before taking up in the next section some of the other issues

that Koopman-Boyden and Scott raise, it is crucial to note that whereas they chided Easton for his child-centred orientation to family policy, the principal focus of their own investigation is on dependent children in a family setting. Indeed, the first pages of their book dealt entirely with the question of the dependency of children and the relationship between the family and the state in the tasks of care and support. In spelling-out that focus, they showed where they diverge from Easton, in a primary concern

> . . . with families in which dependent normal children are being cared for since we consider the caring needs of other dependent members to be sufficiently different as to warrant separate study. At the same time, we recognise that many of the the principles and issues discussed can be applied to the care of other types of family dependents such as the elderly and the handicapped (Koopman-Boyden and Scott,1983: 21).

If labels can be constructed for these two approaches to family policy, it may be fair to call that of Easton *income maintenance, child-centred*, and that of Koopman-Boyden and Scott *caring, dependency*. The two approaches are not necessarily in opposition, and reflect different selections of social facts to construct different realities. This thesis presents a third construction.

Families or children? To promote an ideal of family policy in the fashion of Koopman-Boyden and Scott is to take the ideological position that families are a vital social unit and deserve recognition and support from the state. It presupposes that families can be viewed as the instruments, or means, towards some specified policy objective. In their own terms, these are economic support and the nurture of dependents. By further definition, the model of investigation which they used was restricted to "families with normal dependent children", qualified by the belief that it could be applied to other dependants such as the elderly and handicapped children. This immediately raises the question of the demarcation between one policy area and another. For example, is policy for the dependent elderly to be considered a part of family policy or part of aged care policy? Are handicapped children to be considered a family problem, or part of the larger policy for the community welfare of the disabled, now making a considerable impact as a sectional lobby?

The solution offered here is to abandon the demarcation model and along with it the idea that any policy area can be static and have closed and impermeable boundaries. A type of systems theory model begins to emerge with that approach. In such a scheme, social policy is made up of many policies with shifting and overlapping boundaries, each responding to the press of social values. It does not become a question of which policy, but the way in which a study of issues can be constructed around a field of interest (Hall *et al.*, 1975: 23). Some will expand, as Koopman-Boyden and Scott demonstrate by their study, others will disintegrate. As an example of the latter, it will be shown throughout this inquiry how policy governing illegitimate children shifted and changed over time, and finally disappeared altogether as social values influenced practices. Therefore, it seems misguided to expect to be able to posit an exclusive *umbrella policy* at the expense of other sectional interests. The answer is not to treat relevant and allied policy areas as in opposition, but rather to acknowledge their right to existence as an area of study, and to ask how they can be incorporated to strengthen new understanding.

To sum up, a policy area is determined by its unit of analysis. Policy for children is a necessary feature of family policy and vice versa. Neither can easily be declared a universal, umbrella formulation, although it is intellectually justifiable to try to do so. In that sense, there is not one policy for children but many, each concerned with the variety of practices and conditions surrounding children. This inquiry investigates how these varied policy objectives have developed over time in New Zealand and their impact on children. In the next chapter, ideas about childhood are brought together, and one vexatious aspect of policy formation, the notion of children's rights, is examined in some detail.

CHAPTER III

CHILDHOOD AND THE RIGHTS OF CHILDREN

This chapter examines the concept of childhood and ideas about the rights and responsibilities of children. In the popular mind, in scholarly activity, for commerce and many everyday activities, childhood as an area of interest and study has burgeoned in the last century and in the last fifty years in particular. This phenomenon is simultaneously a product and a function of the changing status of children within the Western social order. Childhood is no longer demarcated by a single public rite of passage, such as beginning work or the onset of puberty, in the transition to young adulthood but has become a legal and legalistic fact. Childhood may well have been invented by the emerging middle-class (Ariès, 1962) but there also is a sense in which it was re-invented by the paternalistic state of the late nineteenth century.

In the section that follows, the examination of the concept of childhood is limited to the purposes of this inquiry and seeks merely to establish childhood as a social fact with some unique characteristics. In the second section, the literature on the topic of the rights of children is categorised in different ways to provide a review of those writings upon which a model of rights was based .

This struggle with the substantive issues has been a feature for socio-political debate from the 1960s, and the record of it comprises a large and influential knowledge base which has been the foundation for much of the present study. The chapter concludes with a summary of the issues sufficient to inform the discussions in subsequent chapters, especially Chapter VIII, where the notion of children's rights is taken further in the New Zealand setting.

CHILDHOOD RECONSIDERED

In this section, some of the main themes surrounding the idea of childhood are reviewed, ranging from the child in historical perspective through to modern conceptions of childhood and childrearing practices. The literature drawn upon is entirely in the Anglo-American tradition; it has only recently been acknowledged that this Western view not only is ethnocentric but also employs abstractions of thought and values inappropriate to other cultures and hazardous for theorising about cross-cultural comparisons (Keniston, 1971). So far as possible, that caution has been taken into account throughout this inquiry.

Childhood as the social category we understand and accept today had its origins in practices dating from fifteenth-century Europe. That proposition, first put forward by Ariès (1962), was the answer to the question " when did childhood appear as a stage between infancy and adulthood?" Despite a belief that much of his writing was speculative and based upon questionable evidence (Skolnick,1976: vi), his claim has been generally adopted to the extent that most scholarly works describe childhood as a relatively recent historical innovation developed over the last four centuries (Freeman, 1983; Laslett, 1971; Meyer, 1983; Plumb, 1972; Sommerville, 1982). What remains in dispute is, not so much the influence of particular social forces, religious or secular events and practices, but the degree to which any one of these may be accorded more weighting than the others. Moreover, some critics point out that a preoccupation with the Ariès thesis can obscure the equally rewarding study of the relations between parents and their offspring, and other dynamics of the family and its environment (Sommerville, 1982). Thus, there is the further caution that *infancy* as a social category, generally up to age five or seven years, existed both before and contemporaneously with the invention of childhood.

At best, speculation about the changing status of children over the centuries is based on sketchy information. There are two major limitations on

the sources usually sought by historians. Firstly, the study of childhood life was never in itself considered a valuable activity separate from the study of adults. Thus, in science, art and literature, the child was until the eighteenth century portrayed as an adjunct to adult life. The fragility of survival has been said to account in part for an attitude that children were of little significance. Until well into the last century,

> . . . infants died more often than they lived. ' All mine die,' said Montaigne casually, as a gardener might speak of his cabbages. And until they reached the end of infancy, between the ages of five and seven, they scarcely counted. A character in Molière when talking of children, says, 'I don't count the little one.' Men and women of the sixteenth and seventeenth century would not have regarded the exposure of children by the Spartans, Romans and Chinese as callous. Indeed it is likely that the poor of Renaissance Europe treated unwanted infants with a similar brutality. Life was too harsh to bother overmuch about an infant who would probably not survive anyway (Plumb, 1972: 155-6).

Secondly, whatever accounts could be gleaned from books almost exclusively dealt with the "first world" of childhood, that of the rich and the privileged, leaving practices amongst the poor and ordinary peoples obscure. "A largely illiterate peasantry leaves few records for later generations to ponder" (Pinchbeck and Hewitt, 1969: 22). The beginnings of what Marrou (1956: xiv) has termed the *scribe culture*, wrought a change in the education of Greek upper-class boys, adding to military and pugilistic skills an intellectual dimension, requiring them to know how to read and write, and setting the model for later adaptations of classical education. That practice was also the beginning of a form of patronage and control by ruling elites in which their lives, exploits, and beliefs as leaders were the only subjects worthy of recording. Even public documents and records, for example the Domesday Book, must be seen in this light as instruments of control over the masses. The introduction of printing technology in fifteenth- century Europe made little difference initially to the widespread literacy of the poor. During the Industrial Revolution in England, reading was to become a skill widely taught to the working class for religious purposes. Lest they got ideas above their station, however, the teaching of

writing was forbidden and suppressed in Sunday Schools, except for those identified to become clerks and teachers (Jones, 1938: 154-62). In any case, for centuries middle-class manners and morals were the only fit secular subjects to be propagated in the printed word. And, when the life-chances of the poor and working people began to be taken up in eighteenth-century England as the object of entertainment, creative study and later a cause for reform, it was an adult middle-class readership for which such works were intended. In that country, between the years 1700 to 1750, a dramatic literary revolution was described as

> . . . one that was to influence the world's literature profoundly. Through Defoe, Swift, Richardson and, above all, Henry Fielding, prose through the medium of the novel came to be regarded as the proper vehicle for the expression of the *full* imaginative treatment of man's entire moral and emotional life: comedy, satire, tragedy could be expressed realistically, through the description of the lives and adventures of the men and women whom the readers could recognise as similar to themselves. The kings and princes, the ancient Romans, distant Greeks and improbable Persians of seventeenth-century literature gave way to apprentices, serving maids, squires, doctors, lawyers, parsons, everyday people doing everyday jobs. Their adventures were usually odd, but their reactions, their emotional responses, belonged to the recognized world of eighteenth-century middle-class England (Plumb, 1972 : 38).

Similarly, in the first century of New Zealand's colonization, literacy and literary taste were largely dictated by adult middle-class mores, overlaid with a kind of "jingo-patriotism", according to Gibbons (1981: 302-13).

In Ancient Greece, as recorded during the Hellenistic Age, the task of the boy was to become a man, and his activities and education were shaped by that precept (Marrou, 1956). Until the seventeenth century, the prevailing view in Europe was that childhood was solely a period of preparation for adulthood, and socialization techniques were directed towards that end.

> As in the emergence of adolescence, childhood as a distinct stage of the life cycle seems to have been a product of socioeconomic and cultural changes which removed children from the world of work and placed them in age-graded schools. Although the evidence is more

> sketchy than in the case of adolescence, the great changes in attitudes toward children, as well as their treatment, seem to have taken place between the seventeenth and the nineteenth centuries. Many of the ideas about children that we take for granted as part of human nature seem to have originated during this time (Skolnick, 1976b: 6).

This is not to say there was no concern or interest in childrearing and the education of the young, but the approach to these issues was to remain adult-centred until the twentieth century. Similarly, the idea of the *stages of man,* attributed to Hippocrates but more commonly associated with the adaptation made by Aristotle, has had a long currency and helped to shape ideas about children. For the Greeks, the first three "ages", each of seven years, were to be devoted to education for the high born. From birth to seven years nothing formal was provided and schooling as such began with childhood at seven. Between the age of fourteen and twenty-one years, higher education began in preparation for the final stage of civic and military training which marked the transition to adulthood. These were some of the notions of the Classical era which were to be re-discovered and re-worked during the Renaissance.

Scholars seem agreed that three aspects of life in fifteenth-century Italy were the major influences which marked the re-conceptualization of childhood (Aries, 1962; Plumb, 1972; Sommerville, 1982). These were a change in family structure and function; the new emphasis on scholarship, education and creativity; and the adoption of the image of the child as the symbol of a new sensibility. Later, these practices spread to much of Europe. Each of them is dealt with briefly below.

The fresh practice in family structure can be summarised as a trend to smaller, competitive, urban-dwelling units which were a response to growing mercantilism and economic expansion. In the studies last cited, these entrepreneurial families are designated as the germ of the rising middle class and the model for the nuclear family. Modesty and privacy in relations between families was extended into the separation of parents and children within the

home. The invention of the "four poster" bed, originating as a curtained sleeping platform in one-roomed dwellings, is attributed to adults' wish to copulate privately (Ariès,1962: 394-6).

As children were incorporated more closely into family life, they were also separated from it by the burgeoning phenomenon of formal education. A *scribe education*—teaching application of scholarship rather than merely social skills—became the norm for the boys of this emerging class. While the Humanists saw themselves in the vanguard of educational reform, the changes seem to have been in content and degree rather than in method. Brutality and unremitting study were the order of the day, the pain of which gave a classical education some cachèt amongst the aristocracy, who had long regarded preparation for adulthood as being a toughening process. One writer has speculated that ". . . the ability to be creative often develops through the experience of pain and disorientation. If the schools were in fact more severe, that very fact may have made some contribution to the outburst of cultural activity in the Renaissance" (Sommerville, 1982: 86).

Experiments in painting and the plastic arts were activities of the Renaissance that have had most impact on subsequent generations. In particular, child figures, from infants to adolescents, not only took centre stage as subjects in paintings, but also filled backgrounds as decorative, symbolic motifs. The Renaissance is also notable as the period when children began to be portrayed with a photo-realism hitherto unknown, recognisable even today as children rather than as the scaled-down adults of earlier genres. One historian attributes these changes to idealism, not to draughtsmanship.

> The fact that artists had finally mastered the anatomic proportions of babies—with heads a quarter of the length of bodies instead of a sixth, as with adults—might lead us to suppose that they were beginning to understand children better. But our suspicions are immediately aroused by the fact that their paintings do not show infants swaddled, though this was the universal custom. It was an idealized childhood which fascinated them, not the everyday reality. And it was not long before we find the telltale signs of sentimentalism. By the time of Raphael (1500), the children are almost too appealing, indicating a

> failure to resolve some aspect of childhood that kept bringing the artist back. . . . Some of the children in Renaissance paintings could be justified as philosophical symbols. For the little figures we call 'cherubs' represented love or the gods of love, as they had in the Greek *erotes* and the *putti* of Roman art. (Sommerville, 1981: 82)

While these practices foreshadowed the commonplace acceptance of a separate world of childhood for the children of the middle class, the religious reformations of the sixteenth century were the ultimate determinants of it.

Children were both the target and the vehicle by which a new mode of behaviour for polite society was introduced. The transformation to the idea of the innocence of childhood was based on fresh educational principles which were to become firmly entrenched in Europe by the end of the eighteenth century.

> A great change of manners took place in the course of the seventeenth century . . . . It was no longer a case of a few isolated moralists like Gerson, but of a great movement which manifested itself on all sides, not only in a rich moral and pedagogic literature but also in devotional practices and a new religious iconography. . . . An essential concept had won acceptance: that of the innocence of childhood. (Ariès, 1962 : 110)

In brief, both Catholic and Protestant theologies developed new conceptualisations of the place of childhood in the divine order, and a conscious reliance on the power of education to instil those ideas. Schooling for the Christian life was to begin earlier, to reach more of the population and to take on an institutional pattern still largely unchanged in the modern epoch. Practices of the Renaissance and Reformation eras cumulatively increased intervention in children's lives, but the dynamic of the social forces leading to that transformation is not always agreed upon. On the one hand, the earlier and more conventional view promoted the ostensible repressiveness of Protestantism as the *ends* of a crusade for moral training of children, and education in the shape of the school simply as the *means.* On the other hand, there is the point of view that it was the primacy of education which was recognised as a powerful socialising instrument and, therefore, ensured the

perpetuation of the movement (Sommerville, 1981: 89). In the struggle for the divided commitment of Christian Europe, Catholic and Protestant leaders alike developed principles of moral education which were remarkably similar. In outline, those principles can be enumerated as :

1. Children should be constantly supervised by adults to forestall displays of immodest or sexual behaviour.
2. Behavioural training should begin in infancy and 'discipline' strictly applied.
3. Modesty and decency should be paramount codes.
4. Formal relations with, and respectful physical and social distance from, adults and others must be taught, in order to prevent over-familiarity and the danger of breaching decency rules.

(Adapted from Ariès, 1962: 114-9)

Not only was this protection of the innocence of childhood a moral banner to be flown in the residential schools in which it developed, but it was also to become the code for everyday middle-class family life.

By the end of the seventeenth century, all of the conditions necessary for a separate world for children had been demonstrated; it only remained for this to be extended to the children of the lower classes. In the long run, it was once again the institution of the school which was to make the final separation of adult and child life in the Western world, allowing changes to family life and the workplace that would progressively exclude children.

We now acknowledge that the social reformers and commentators who railed against the exploitation of child labour in the growing industrial cities of eighteenth and nineteenth century Britain were also describing a style of life common to the rural village. In the populous cities, brutalisation and potential moral corruption of the working-class young was not so easy to overlook (Pinchbeck and Hewitt, 1969: 387-413). By 1750, the school, and especially the residential school, had already become well established for the socialization of upper-class children, a model which the expanding bourgeoisie

was quick to follow. As described in more detail in Chapter IV, various forms of school were experimented with by moral reformers in cities and villages in an attempt to reach the mass of children.

The battle for the exclusion of children from the workplace and the home was neither easily nor quickly won. The first compromise of eighteenth-century England was the widespread use of the Sunday School, which allowed children to stay in the workforce and to be educated morally on their day of rest. As industrialisation progressed, the dilemma for the owner class was to maintain a skilled labour force drawn from a pool of young people, many of whom had already beeen spent by their youthful labour. Fundamental capitalist principles also raised questions of whether children should be able to sell their modest labour on the open market and thereby improve their life-chances, and conversely, the right of the owner to purchase cheaper labour. In the event, children proved to be a poor investment on the factory floor and there were always more of them than could be absorbed into gainful work. Indeed,in 1803 a census of beggars in metropolitan London showed that of the estimated 15,000 on the streets, more than 9,000 of these were children (Pinchbeck and Hewitt, 1973: 497). The story of how the Poor Law provisions were applied to rescue deprived children is too long to tell here but, in brief, day schools run by Poor Law funding were the prototype of the English state school system developed in the nineteenth century. The final step was to make schooling compulsory for children, keeping them out of the workplace, releasing parents from the burden of custody and making the streets convenient for decent citizens. For those without parents, or from fragmented and impoverished families, church and rescue agencies in Britain were to develop a parallel system that had become a huge industry by the end of the nineteenth century. It was a pattern largely followed in New Zealand, as this inquiry shows in later chapters. And, as the theme and driving force of these developments, a different symbolic picture of the child was to emerge.

The infant and child figure in art, religion and, later, literature, has been used in various ways since the Renaissance to express elements of the human

condition. Such usage only rarely had any connection with the everyday reality of childhood and, most importantly, contradictory images of childhood often co-existed, as they do today. For Roman Catholics, attention to childhood was a reminder of the ways in which to transcend *original sin*; for the Nonconformists, a chance to make a declaration of salvation. A similar paradox of using childhood to express conflicting sentiments is identified in the literature of the nineteenth century. Conveney (1957) claimed that literature, from ". . . the mature to the banal", expressed a conflict between puritanical restraint, self-denial and repression, and artistically-distorted notions of romanticised freedom portrayed through childhood character. He went on to say that:

> Industrialism, utilitarian "facts", Puritan morality, and the institution of the Victorian family, were the engines of restraint; Nature, Imagination, Wonder and Feeling were the symbols of the child's emancipation. Through the symbol of childhood's "original innocence", expression was given to one of the major problems of modern culture, the plight of humanity in a harshly de-humanizing society, and the urgent conflict of Reason with Feeling. But in making the humanist protest on behalf of innocent childhood, romantic literature . . . served to disseminate a world-picture of childhood which led to a very widely accepted falsification of its nature. The angry protest became in general acceptance nothing more than a convenient vehicle for staggering pathos, and in so far as it remained active, it served as a potent means for withdrawal, for regression away from the very problems it had been created to express. So that, by the turn of the century, the child needed emancipation, not only . . . from the Puritan family, but from the careless and very widely accepted falsification of the myth of its "innocent" nature. Both "original sin" and "original innocence" in their general acceptance had become impediments to an objective assessment of the nature of the child, and the significance attached to its education and experience (Conveney,1957: 239-40).

New significance has come to be attached to the young child as symbol in the period since World War Two. At the national level, in both socialist and capitalist societies, children are frequently depicted as the symbols of national pride, unity and growth, used to express ideas of future development and investment. The status and well-being of children are also used to portray what Bronfenbrenner calls the criterion for judging the worth of a society: the concern of one generation for the next (1970: 3). Similarly, at the international level,

child symbols have become very potent images to make cross-national statements about conflict and inter-country relations. Famine and poverty appeals in developed countries, assisted by the immediacy of television, invariably feature child victims to ignite charitable impulses by individuals of one society for the other. Thus, in the century's transformation from printed appeals alone to electronic media in addition, the innocence of childhood is now routinely used to symbolise hope, justice and mercy.

A further development has been the emergence of *youth cultures*, social movements involving adolescents and young adults, fired by rebellion against traditional, adult values, and by conformity with peer-group values. While the rebellion of youth is far from new, the scale, the intensity and the rate of change has been a new feature. From such movements have emerged stereotyped images of young people searching for new values to replace the old or, sometimes, expressing a nihilism and self-destructiveness taken to be symptomatic of social ills. Reinforcing the power of this age grouping is the attention they draw from the commercial and advertising sectors in competition for their considerable disposable income. In the Western world, the desirability of youth is a concept marketable also to older people, with the result that a veneration for youthful symbols has become a commonplace commercial artifice. However, continuing the simile used earlier, the "second world" of adolescence and young adulthood, those who are disadvantaged, homeless or unemployed, also produced its own symbols of alienation. Part of the function of governing these non-conforming citizens involves surveillance and study of such groups and movements.

Self evident as it may be, it needs to be said that dealing with and studying children has become big business. Just as children act on their environment to produce reciprocal changes in it, the world of childhood has metamorphosed in the last century through the institutions which have taken up children as their *raison d'étre*. Uniformly throughout the Western world, more occupations are concerned with children and more money is expended on and because of children than ever before. The invention of compulsory education and the state

school system had created in the modern epoch a leviathan of state industry that led to the creation of a multitude of subsidiary industries. The child rescue movement which gathered momentum in the late nineteenth century became an enterprise of state and non-statutory endeavour that has persisted and burgeoned, differentiating in the state apparatus through the welfare, income maintenance, health and education sectors. In the knowledge and information industry—universities and scholarly research in particular—the study of childhood forms a large part of its production.

Alongside the study of child development and policy for children, the long neglect of the study of childhood by professional historians has been reversed in the last two decades. Such material has a great deal to offer other disciplines, and the surge of interest in this field has been welcomed on all fronts. The extent of that renewed interest in the cultural construct of *childhood* was charted in a bibliographic note by Sommerville (1973). From a dearth of sources on the subject prior to 1960, dozens of books, articles and theses appearing since then amounted almost to a surfieit. Sommerville charts the range and extent of recent historical writing on the topic, noting that older histories were of great interest because of their revelations about the attitudes prevailing at the time of their writing. Similarly, in his opinion, historians are tackling the subject of childhood with analytical tools from the social sciences not previously imagined, and doing it with greater verve and adventurousness.

Nor is the interest in children confined to national boundaries. In the last forty years, the secular child rescue movement has become an international force mobilising funds and resources on a huge scale for the relief of children of the Third World. In so-called less developed countries, children comprised 40% of the population compared with 25% for developed countries (McHale, 1979: 11). Alongside the co-operative international agencies such as Unicef, multinational relief agencies are active in the redistribution of resources for the succour of children.

The changing scale of the enterprise is an artefact of changed social

values and attitudes towards children and the notion that childhood constitutes a discrete stage of the life cycle. As Western society became more child centred, more committed to establishing a separate world of childhood, the demand for solutions to socially created problems continued apace. The issue was not only how children ought to be governed but which agencies should do it.

Implications for New Zealand. Of all the changes which have affected the lives of children over the centuries, the most far-reaching has been the creation of separate everyday existences for children and for adults. That trend has become more evident in New Zealand from a time when for Pakeha children ". . . colonial circumstances provided both more need and more opportunity for close links of sentiment within the family" (Arnold, 1982: 26). Legislation protecting children from the dangers of the workplace, exploitation and competition with adult workers is reciprocated in the compulsion to attend school. Not only has the division between the place of schooling and the place of adult work widened, but by the twentieth century, for most children in the Western world, it has also meant divisions between the places for play and the places to sleep. Separate recreational areas for children are places where adults act only as non-participant caregivers or officials; similarly, locations given over to adult "play" are by law, rule or custom reserved for adults only, such as those licensed to serve alcohol, practices which had their origins in protecting children from corrupting influences. Standards of decency and modesty also meant separateness in the household and, in particular, in the bedroom. So, as privacy came to be equated with decency, middle-class children not only ceased to share sleeping space with their parents from an early age, but also were segregated from their siblings on sex-lines, if not individually separated. By the twentieth century in New Zealand, most working-class families aspired to a genteel household style (Olssen, 1981: 250-60).

The second most apparent change has been the development of industries and service vocations preoccupied with children. Functional

differentiation is said to be the hallmark of the post-industrial society, and nowhere is that better illustrated than in the education industry, which in the space of a century has grown to be a huge enterprise in New Zealand, employing thousands of teachers, each with specialisms targeted at one age grouping, from infancy to adults. In the background are hundreds of para-education specialists and industry support services.

Viewing the present in the light of the past, it is possible to make some broad generalisations about differences in the conceptualisation of childhood and the status of children. A pressing issue in New Zealand is to find ways to accommodate Maori aspirations to reclaim their language and their children. To continue the gains already made from key programmes such as Te Kohanga Reo and Maatua Whangai (see Chapter X) will require that a bi-cultural approach to the meaning of childhood be developed. At present, it is predominantly only Maori who can understand childhood from both perspectives.

In Pakeha culture, where many practices have waxed and waned with the child-rearing fashions which informed them, there has been a discernible shift to a more child-centred philosophy of parenting, to allow the enjoyment of childhood for itself (Ritchie and Ritchie, 1978). In the past, decisions affecting the regulation of childhood life were made by adults from an adult perspective. Generally, those views were guided by visions of what the child was to *become*, and the shape of the environment required to mould that mature, adult form. Childhood activities are more separate from those of adults than ever before and the boundaries between childhood, youth and adulthood have been extended and become less permeable, leading to transitional uncertainties. New Zealand society is *child-centred* to the extent that everyone, parents and children in particular, has a greater consciousness of the study of the nature and quality of childhood (Ritchie and Ritchie, 1978: 164-72)

Finally, the growth of the public health, education and welfare systems has created a sense of accountability and public participation in the socialization

and welfare of children, yet these have become more impersonal, fragmented and complex to the individual citizen, and alienating for non-Pakeha. We may know more about childhood yet less about living. The continuing search for the optimum ordering of relationships between children and others is the focus of the next section.

CHILDREN'S RIGHTS

The success and perpetuation of any democratic system of government rests on the degree to which it can legitimise its interventions. For adults, consent to be governed has a reciprocal relation in the nature and extent of civil, political and social rights; generally, the more liberally these are extended the less the polity will feel exploited or powerless. As matters stand at present, children cannot consent to be governed. Moreover, there has been a growing feeling throughout the Western world that attempts by the state to appear to be protecting and extending social rights to children has not only been covert *embourgeoisement*, but has also led to the curtailment of their civil and political rights (Franklin, 1986c). Put more succinctly, the reforms introduced by the child rescue movement of the late nineteenth century, described as paternalistic, romantic, and reactionary (Platt,1969: 176), had by the second half of the twentieth century become greater problems of fairness and just government than the issues they purported to address (Takanishi, 1978: 9). This proposition, which underlies the whole of this inquiry, is the orienting idea for the following review, which is organised into three sections.

First, there is a section on *methods of study* which aims to show the patterns and formulations, other than formal philosophy, used to identify and analyse evidence about children's rights. This is divided into these two approaches: *chronological, thematic and retrospective*, those that set an examination of children's rights within the contextual features of the societies being discussed, and to develop a narrative from which a developmental sequence might be inferred; the *substantive* approach, that encompasses

specific instances of rights in policy and practice for children. These studies invariably argue that the rights of children are a necessary but imperfectly realised condition of contemporary society. The second, and larger section, on the *scope and nature* of the topic, begins with an elaboration of the notion of rights as a social device. This moves on to the fundamental issue of whether the concept is logically defensible in the case of children and the status of the current debates on children's formal and substantive rights. In the third section, the model used in this inquiry is explained, including the typology that was constructed as the instrument for interpreting children's rights, and some concluding comments made.

Methods of Studying Children's Rights

As well as the pursuit of the abstract notion of rights, the topic can be investigated in a deductive fashion by setting accounts of the position of children in time and space. This can be done by broad investigations covering long periods of time, by drawing together themes over time, or by comparing the present with the past. Those methods are considered first in this section. The second part makes some observations about the method of using a single topic of substantive rights to argue the more general case.

Chronological, thematic, and retrospective studies. Alongside the historiographic accounts of childhood in transition, a few writers have attempted over the last fifty years to put the issue of children's rights in historical context. That was done in three ways. Some took a strict sequential approach, some a thematic approach across time, and others a retrospective view, summarising past practices to compare them with present ones. The central purpose of most, in accord with the purposes of history in general, was to give a portrayal of the present with a view to prospects for the future. These histories—for that is what they are—dealt more with family and economic relations, and the status and capacity of children than with rights *per se*. Nevertheless, they became the source and the inspiration for the study of rights in historical perspective, and some examples of each are given.

The earliest of the sequential examples was the comprehensive compilation by Abbott in the USA , of two large volumes—totalling about 1,400 pages—under the title *The child and the state* (1938). Abbott assembled extracts from public documents, statutes, law reports, books and articles dealing with both Great Britain and the USA, knitted together with brief introductions and commentaries. This material pertaining to the welfare of children covered in Volume I the legal status of children, apprenticeship, child labour, and in Volume II the care of dependent children, delinquent children and those of unmarried parents. The documents, and the extracts included, clearly reflected Abbott's own interests and tastes, and amounted to an attempt to let them speak for themselves as a thematic chronology. They remain an invaluable resource for students of child welfare. Of greatest interest in this inquiry, however, are the interpretations which Abbott herself made of the status of children in her own era.

Abbott opened with the declaration that "The progress of a state may be measured by the extent to which it safeguards the rights of its children" (1938: vii), a claim to be echoed and elaborated some thirty years later by Bronfenbrenner (1970: 3). There is no mistaking, however, that the rights to which she referred were limited firstly to the right to belong to a family, and, secondly, to the right to state protection when parental duties were unfulfilled. She applauded the advances made for the protection of children in all the areas reviewed, while deploring the tardiness shown by some American states in moving on those issues. In summary, Abbott was able to describe with some satisfaction the establishment by 1938 of a paternalistic system of child welfare which aimed to promote family cohesion and provided a safety-net for the fragmented family and the alienated child.

An updating of Abbott's work was commissioned in the 1960s under the editorship of Robert Bremner. Only the first, of a series of three volumes entitled *Children and youth in America: a documentary history* has yet appeared. The series will eventually cover the history of public policy towards young people from the year 1700 to the present. The initial volume differs from Abbott's work

in the greater amount of interpretative linking comments and the number of sources consulted and included. Its design was to periodise segments of American public policy under labels which most aptly described the status of children. The scope of such a work necessarily makes a generalising and stereotypical approach unavoidable, and publication of Volume 1 was greeted with some savage criticism by a leading historian (Rothman, 1972). What Rothman objected to was the impression conveyed of a smooth, conflict-free "progress" in the rights of children. Putting it alongside other recent works on the history of the family, Rothman acknowledged that for all their weaknesses and methodical limitations, collectively they highlighted the inadequacies of traditional interpretations (Rothman, 1972: 373).

Pinchbeck and Hewitt's two volume work on *Children in English Society*, 1969 and 1973, traverses four centuries by a combination of thematic and chronological discourse. They established quite clearly the period at which the idea of rights for children began to emerge as part of the child rescue movement in the early nineteenth century. Their analysis of the social values and attitudes towards children around that time help to put studies of New Zealand settler society in context. As a further example of the thematic and chronological, the wide-ranging review of *The rise and fall of childhood*, constructed by Sommerville (1982)—drawn on in the first part of this chapter—built up to an alienated and pessimistic view of children and prospects for children's rights. In one sentence, Sommerville's thesis was that so long as western society suffers a crisis of identity, children too will follow that model.

A prime example of the thematic approach is that of Platt (1969), who reviewed and analysed the consequences of the child-saving movement of the late nineteenth and early twentieth centuries in America. Platt's thesis was that the configuration of interventions for juvenile offending could be traced sequentially through the growth and development of an ideology of moral rescue and control. A further example is the cross-national study by Boli-Bennett and Meyer (1978) who, from the written constitutions of a number of countries, looked for rules that distinguished children as protected persons.

Typical of the retrospective method is Wood's *Changing social attitudes to childhood* (Wood, 1976).

Taken together, chronological, thematic and retrospective studies reinforce the inescapable conclusion that the Western world has gone far on the protectionist dimensions. Relations between parents and children, and between society and children have materially altered for the better. Children today have higher survival rates, more freedom from disease, live in greater comfort, and are afforded measures of protection against exploitation, cruelty and neglect. As will be shown below, reaction to that protectionist approach has, in many facets of governing children, created a belief that children are denied rights and led to a demand that they be accorded those given adults.

Substantive rights. The voluminous literature on children's rights has covered structural inequalities, the practices to which they were subjected and, indeed, all contingencies that might befall them. After the array to be found in learned journals, examples of the treatment of single issues of children's rights are most prominent as essays found in the numerous anthologies that have appeared in the last two decades (Adams et al., 1971; Gottleib, 1973; Gross and Gross, 1977; Harvard Educational Review, 197 ; Human Rights Commission, 1980; Franklin, 1986; Shannon and Webb, 1980).

Of most interest to this inquiry are those studies that dealt with specific issues of the rights of children. Three are briefly mentioned here. When first published in 1973, *Beyond the best interests of the child*, by Goldstein *et al.*, promised solutions to the issue of the rights of children in the matter of custody. Based on psycho-social theory applied to child placement in foster care, adoption, and in custody disputes, this work postulated one iron rule: ". . . a child's placement should rest entirely on consideration for the child's own inner situation and developmental needs" (Goldstein et al., 1973: 106). Central to discovering that "inner situation", was the idea that psychological bonding could be measured by experts who act as diagnosticians and witnesses. Except for cases of extreme abuse or neglect, they proposed a further rule of the integrity

of the family and minimum state intervention as being in the best interests of children. While the framework generated further useful discussion, and was widely adopted (Zelas, 1980: 31), even those who favoured a degree of paternalism found the ambiguity of non-intervention and protectionism irreconcilable (Freeman, 1983: 246-8).

Also on a single topic, Dingwall *et al.* (1983) reported their empirical study on child abuse and children's rights. Using a research framework that recognised how social problems are constructed by definition, they followed the careers of child abuse cases through English protection agencies. Then, having described *how* that system operates, they attempted to show *why* it was so organised. Finally, they addressed themselves to the balance between adult liberties and children's rights. Their conclusion was that a certain degree of interventionism was inevitable to protect children from adult irrationality, but that better administrative regulation and easier access to adjudication at all stages, including appeals, might equalise the balance of rights.

Finally, children's rights in the legal system were examined by Morris *et al.* (1980). Their work was about the inherent contradictions in the juvenile justice system of Britain that led, in their view, to injustice for children. As a technique for setting forth their argument, Morris *et al.* compared and contrasted evidence from practices studied against the principles they saw necessary for an even-handed justice system. On the whole, they were not opposed to a degree of protection for the abused child but strenuously against a paternalistic system for young offenders. Morris *et al.* felt that the juvenile court should be used only after attempts at diversion had failed, and that it should be concerned with community safety and reinforcing norms rather than with the ostensible 'needs' of children (Morris *et al.*, 1980: 68). In that connection, they set out seven principles they thought essential to bring juvenile justice into line with that for adults. These are itemised here because they have direct bearing on practices evident in New Zealand, and where infringement of most have been the subject of claims for juvenile rights.

The first principle was that of the commission of an offence. That would remove from juvenile courts jurisdiction over non-criminal behaviour and so-called *status offences* —running away from home, for example. The second principle was the proportionality of sanctions. Historically, juvenile courts have shown the moral career of the offender to be taken into account and that dispositions varied widely from one court to another. In the adult code maximum sentences are set for offences, and by peer review courts establish rules of sentencing that are absent in the juvenile court. Unless and until a scale of offences and sanctions is constructed, juveniles would continue to be meted out punishments that do not necessarily fit the crime. The third principle was that of determinate sentences. Indeterminate sentences were first invented and justified as treatment in the interests of the young person, a practice that was overturned by the USA Supreme Court in the landmark case of *In re Gault* (Davis, 1974: 173) The fourth principle was that of the least restrictive alternative. In brief, that suggested that sentences should minimally interfere with the liberty of the offender. The fifth principle was the juvenile's right to counsel. That can only be achieved by a form of public defender or duty solicitor scheme as available to adults. By the same argument, any such provision made should be waivable by the defendant. The sixth principle called for limitations on interventions prior to adjudication and disposition. Holding young persons prior to a final hearing constitutes a loss of liberty that will be construed by them as punishment. Courts should discontinue the use of lengthy remands in custody, whether in youth prisons or in social welfare homes. Finally, the seventh principle called for visibility and accountability in decision-making. The informality deliberately fostered in children's courts had also come to mean little record keeping and loose arrangements, such as referral to higher courts for sentencing, with no written reason being supplied to any party or the higher court. Appeal rights on all juvenile court decisions should parallel those for adult courts (Morris *et al.*, 1980: 66-82).

As Lees and Mellor (1986: 163-4) point out, to posit principles of equality of rights is a form of liberal idealism which remains hollow unless the structural barriers to the attainment of them are made plain in the method of Morris *et al.*

Accounts of how children are treated in specific situations help to refine these substantive or second-order rights, and are an important step in constructing paradigms of rights. Substantive rights are also part of the study of formal or first-order rights, a subject included in the next section.

Scope and Nature of Children's Rights

Human rights is a concept that is difficult to elaborate with certainty and clarity; when applied to children the conceptualisation problem is immense. Freeman suggests that the term brings together two concepts which are problematic (1983: 34). Childhood, as discussed in the first part of this chapter, is a fluid social construct that does not always lead to consensual agreement on what constitutes a child. In the same way, the construct of rights leads to diverse opinions that may agree only at the level of *banner goals*, those ". . . general but grand abstractions—evangelical ideas arousing people's minds to inspire mass movements, new social policies, and revolutionary approaches to what work is to be done" (Algie, 1975: 23). The banner goal of equality, of a system to treat people as equals, is fundamental to most theories of rights. The specification of what constitutes a right in practice, however, is more contentious, and highlights in liberal conceptions of rights and justice the ambiguities between formal rights and substantive rights (Lees and Mellor, 1986). This section is largely about the way formal rights have been conceptualised by philosophers and rights advocates.

The concept of rights. From a sociological point of view, Western democracies have over the last few centuries codified three separate elements of rights for citizens. First to appear, dating from the eighteenth century, was the idea of *civil rights*, embedded in the legal system and generally referring to guarantees of individual liberty and equality at law. Secondly, *political rights*, referring to enfranchisement and the guarantee not only of the vote but also freely to seek elected office, gained ground during the nineteenth century, culminating in universal adult franchise around the turn of the century. The third element, *social rights*, a feature of the twentieth century, was expressed initially

through the institution of social security and later the rise of the welfare state as a form of collective risk-sharing. In combination, these citizenship rights amount to norms which define the membership of complex industrial societies, leading to practices which reduce tension and promote social solidarity (Mishra, 1981: 23) and, at the individual level, to the creation of expectations which may or may not be fulfilled. These are *explicit rights*, that can be measured by degree. Another type known as *implicit rights* are discussed below.

Rights define a relationship between self and others in which reciprocity is a key element. Some practices have become so institutionalised into everyday life that they may not be recognised as a category of rights unless and until people feel their expectations or claims are unfulfilled. By the prior definition of situations, rights become a social lubricant which enable claimants to act with dignity and certainty towards the grantor. Moreover, they are not

> . . . mere gifts or favours, motivated by love or pity, for which gratitude is the sole fitting response. A right is something a man can *stand* on, something that can be demanded or insisted upon without embarrassment or shame. . . . A world with claim-rights is one in which all persons, as actual or potential claimants, are dignified objects of respect, both in their own eyes and in the view of others. No amount of love and compassion, or obedience to higher authority, or *noblesse oblige*, can substitute for those values (Feinberg, 1966: 8. Emphasis in original).

The logic of children's rights. Rodham has said that "The phrase children's rights is a slogan in search of a definition" (Rodham, 1973: 1). Another way of expressing this is to say that the notion of *children's rights* does not have an absolute unity but is made up of a number of interlocking and complex issues which must be located in their cultural context and ideological base. Thus, the term is used differently according to the context and setting. This is analogous to the observation in Chapter II that *social policy* is an ideology-bound construct and that policies for children reflect the thrust of the dominant societal ideology. An examination of those policies can reveal the way in which questions about the status and capacity of children are interpreted in any given social system; policy then becomes the instrument by which rights are recognised and

executed. Of immediate interest, however, is some clarification of the meaning and usage of this many-sided term, children's rights.

Before the twentieth century, the attention given by English philosophers to the issue of children's rights centred around the powers of parents, fathers in particular, in relation to their offspring. The arguments of three leading philosphers, Thomas Hobbes, John Locke and John Stuart Mill, who in different ways supported the paternalistic treatment of children, were compared by Worsfold (1976).[1] Hobbes, it was found, thought children had neither natural nor social contract rights independent of the father. Mill, the great defender of adult rights, shrank from extending rights to "the generation to come". Locke's paternalism, in Worsfold's view, was attentuated, and some muted hints of a liberal view of children's rights were evident. A departure from this paternalism was evident in the writings of Herbert Spencer, who was, and to some extent still is, influential on social thought in the USA. For Spencer, all lines of argument derived from commitment to the Divine Law of Freedom: "that every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man" (Spencer, 1868: 192). The exercise of faculties was the greatest freedom in Spencer's view, and, given that children, too, have faculties they need scope for the exercise of them. By that line of reasoning, either the Divine Law must be rejected, or it must include under it children as well as adults. The foundations for later dichotomous models are evident in the paternalist and universalist approaches to children's rights.

Today, a criteriological problem exists because modern society has firmer perceptions of aspects of childhood and a sensitivity to the issue of rights. Given that children have been legally and physically separated from the world of adults, it follows that their rights and obligations may also be isolated and, therefore, different from those of adults'. Worsfield (1978), building on a scheme proposed by Cranston (1967), suggests that a rationale for children's

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1 A reformulation of Worsfold's critique of these three was also made by Freeman (1983: 52-4) to similar effect.

rights becomes clearer if three criteria for justifying rights in general are adopted. The first criterion is that rights must be *practicable.* To suggest a range of rights that is neither generally accepted nor extended by society at large is to render them impotent. The second criterion is that such a range of rights must be *universal*, appropriate for all children in the sense that they do not discriminate against them by reason of age, gender, race or religion. The final criterion is the doctrine of *paramount importance.* Applied as a principle, this demands that the exercise of rights should not be compromised by any ostensible benefits from not exercising those rights. By way of further explanation, Worsfield writes:

> If the utilitarian principle were pre-eminent, then we can imagine many situations where adults could justify depriving children of rights simply on the grounds that there wasa prior importance of children's satisfaction or well-being which required that certain rights not be allowed them; or, more comprehensively, it could be maintained that when the total good of society is taken into consideration children must be deprived of rights because this leads to more sensible decisions for the whole society, leading to the greatest good for the greatest number, children included (Worsfield,1978: 37).

An attempt to break free of the constraint of merely measuring children's rights against adult rights was provided in a classification of their rights into four categories (Wald, 1979). These were:

> (A) generalised claims against the world, e.g., the right of freedom from discrimination and poverty; (B) the right to greater protection from abuse, neglect or exploitation by adults; (C) the right to be treated in the same manner as an adult, with the same constitutional protections, in relation to state actions; (D) the right to act independently of parental control and/or guidance (Wald, 1979: 260).

This four-fold classification was taken up and re-worked by Freeman, who thought that the distinction between paternalist and universalist approaches oversimplistic and deceptive. He pointed out that real-life claims made by or for children fell into different categories, and that this altered the all-or-nothing argument.

> Different rights have different problems, both of formulation and enforcement. But it is not surprising that proponents have conflated the different categories of rights. It may be that each is seeking support by appearing to broaden the appeal. . . . [Of the four,] the first category are generalised claims on behalf of all children. They can be described as *welfare rights*. Others may conceptualise them as human rights. The second category is principally concerned with *protection*. It demands that children be protected from inadequate care, from abuse and neglect from parents, from exploitation by employers or potential employers, and from other forms of danger in their environment. The third demand is grounded in *social justice*. It is a claim that rights which adults have should be extended to children as well. Those who put this case argue that there is no good reason to treat children differently from adults. This is a claim which has had much prominence in the United States where the existence of a written constitution and a bill of rights makes it relatively clear what rights citizens are accorded. The claim is no less important in this country. The fourth type of claim [*rights against parents*] demands more freedom from control for children, greater recognition of their capacity to choose from alternatives, more autonomy over their lives. It stresses their right to act independently. At one level it demands that children be free to choose the length of their hair, what they eat or when they go to bed: at another level it is expressd as a 'right to alternative home environments' or to seek an abortion without parental consent or notice (Freeman, 1983: 40. Emphasis added).

Two theories of advocacy for children's rights. The events of the 1970s and 1980's have lined up two quite distinct and opposing schools of thought on the issue of advocating children's rights. On the one hand, there has emerged the school best called the *child liberationists*, whose writings are characterised by calls for radical and progressive changes, and on the other, the *protectionists,* who espouse forms of modified paternalism, favouring cautious incrementalism and a kind of middle-ground idealism. This dichotomy, earlier labelled as the universalist and paternalist positions, has also been characterised by Franklin as the *self- determination* versus the *nurturance orientation*, the former allowing children maximum control over their lives and the latter imposing ostensibly beneficial interventions. He went on to describe it as

> . . . a simple, useful and attractive organizing principle to help order the complex discussion of rights. However, a word of caution is necessary, since like many antitheses the opposition here is more apparent than real. Children are claiming and require an expansion of both kinds of

> rights, not that the pursuit of protective rights should not be seen as antithetical to the achievement of self-determination rights, or vice versa. Adults can, and indeed do, enjoy both self-determination and protectionist rights without any necessary tension between the two, although there may be some cases where they may conflict (Franklin, 1986b: 17).

Before looking at this potential conflict in more detail, mention should also be made of other points of view which have to be inferred from anecdotal opinion rather than systematic expositions. To use a political metaphor, these polarise as radical-libertarianism and reactionary, ultra-conservatism. The former sought to have all distinctions between adults and children abandoned. Such groups were often accused of self-interest by seeking to remove sanctions against adults who allegedly exploit younger people, for example, apologists for pædophilia, justifying unfettered sexual relations between adults and children (Ives,1986: 155). Examples of the latter were usually associated with religious convictions about moral certainties, and the virtues of obedience and conformity. In New Zealand, this position was typified by the Integrity Movement and the Concerned Parents Association, which adopted a Hobbesian philosophy that children must be under the jurisdiction solely of their parents until they become independent.

When considering the competing claims of commentators on the issue of rights for children, it is important to recognise that these activists may employ tactics similar to those used by the moral and social reformers of the eighteenth and nineteenth centuries. That is, the situations which they are describing are re-defined in their own terms to give the most favourable construction to their own case. In the sociological enterprise, knowledge about the frame of reference employed is essential to identify underlying assumptions and world-views as a first step to synthesis.

The frame of reference adopted by the *liberationists* was based on moral outrage that children, through no fault of their own, suffer patent injustices as a result of the power applied by the adult world. Adults were accused of hypocrisy in seeking to maximise their own freedoms while denying to children

the right to self-determination and autonomy. A common complaint of this school was the planned repression of children's innate ability, potential and spontaneity through the institutions of health, education and welfare. Educational systems in particular came in for attack in the writings of Berg (1968; 1971), Duane (1971) and Holt (1969; 1970a; 1970b; 1974). The doyen of the child liberation movement was Farson (1974), who described his own advocacy as protecting the rights of children, and the opposing approach as protecting children. In tune with the freedom of expression found in his native America, he promulgated a proposed Bill of Rights for Children covering ten points. For the true liberation of children Farson claimed they must have the right to self-determination, to alternative home environments, to responsive design, to information, to educate oneself, to freedom from physical punishment, to sexual freedom, to economic power, to political power and to justice (Farson, 1974).

In Farson's view the issue was quite plain: so long as children are given conditional rights, they remain the victims of injustice. Similar views have been posited more recently in Britain by Franklin, who attacks the Wald/Freeman classification system as merely ". . . an elaborate variant of an older conceptual division between what may be termed the liberationist versus the protectionist orientation towards children's rights" (Franklin, 1986b: 17).

Protectionism as justice. How can adults feel they have done the right thing if they give up control? It was a step which the protectionists hestitated to take. But, despite the allure of liberationism, protectionism was also an uncomfortable stance to take. There were few in this school who do not admit and abhor the apparent injustices suffered by children who are denied adult rights; everybody conceded that something must be done, but no-one had a complete solution beyond more or different forms of protection. The fundamental rationale of the child protectionist lobby was that children did not easily fit the conventionial justice or "fairness" models governing adults. They say of the liberation school that it ". . . is, in effect, a case of abandoning children to their rights" (Wald, 1979: 282). But a plausible framework has been

established by Worsfold (1976) in the context of Rawls' theory of justice (Rawls, 1972). This was entirely inferred from Rawls' work. Although that made no direct mention of children, Rawls' position on capacity to interpret principles of fairness makes it quite plain that he intended children to be included.

A full summary of Rawls' theory is beyond this present inquiry but the underpinning principles are essential to Worsfold's formulation of it. Under the *veil of ignorance*, part of an essential *original condition*, Rawls argues, individuals would choose two fundamental principles of justice. The first is that each person should have a personal liberty compatible with a like liberty for all others. The second principle is that societal inequalities are to be ordered so that everyone must share whatever advantageous or disadvantageous consequences arise from them. Out of these conditions, Worsfold argued that children are entitled to rights of their own and that children's rights are not necessarily synonomous with those of parents or caregivers. There are, however, circumstances in which paternalism can be justified, never because children have consented to it *after the fact*, and only where it was stipulated in the original contract. Two further stipulations were made by Rawls:

> Paternalistic intervention must be justified by the evident failure or absence of reason and will; it must be guided by the principles of justice [as formulated by Rawls] and what is known about the subjects more permanent aims and preferences, ... These restrictions on the initiation and direction of paternalistic measures follow from the assumptions of the original position. The parties want to guarantee the integrity of their person and their final ends and beliefs whatever these are. Paternalistic principles are a protection against our own irrationality, and must not be interpreted to licence assaults on one's convictions and character by any means so long as these offer the prospect of securing consent later on (Rawls, 1972: 250).

After an elaboration of the good fit between Rawlsian theory and the notion of children's rights, Worsfold tested it with the three criteria of practicability, universality and paramount importance, and concluded that acceptance of the conception of the just society would lead to a change of attitude on the part of adults (Worsfold, 1976: 44). Rawlsian theory has also gained some credence in

feminist perspectives on rights (Lees and Mellor, 1986). Whether or not, in the absence of the *original condition*, it can be widely accepted as the basis for substantive or situational rights remains an open question.

A Model of Rights for Policy

The foregoing discussion has shown how connections between policy and children's rights need to take into account the operationalisation of formal rights into substantive or situational rights. To inform this inquiry, a model of children's rights was constructed which attempted to take into account the tension between the self-determination and the nurturance viewpoints. From the arguments, it seems credible that there will be situations where in order to accord children the greatest possible liberty, some form of intervention or positive discrimination would be warranted. The impulses of the child rescue movement remain strong: there are times when non-intervention is not an ethical choice. The crux of the problem seemed to lie in the degree to which paternalistic interventions, originally hailed as humanitarian progress, had over time come to lie heavily on children and be seen as a reduction in rights.

A typlogy of rights. To come to grips with the complexities of the notion of rights it is necessary to specify its components according to the combinations of possible interactions. I have done this in Table 3. Moreover, my thesis that children's rights have changed is based on the assumption that the change can be demonstrated, and this typology can be used to do so. In this schema, the person claiming or utilising the right is nominated the *claimant* and the responding person or agency, the *grantor.* Although the singular case was used to denote both positions, these may in reality be two or more persons, a body corporate, or some other precise or imprecise form of collectivity. We may, for example, speak of *the government* granting or denying rights when we mean an agency of government. Similarly, we might talk of minority ethnic groups in New Zealand as the claimant when we mean all non-Caucasian residents. Rights in dispute may be argued at law on the basis of individual cases or on generalised collective entitlement. The latter approach, known

elsewhere as *class action,* is not yet a legal entity in New Zealand. As a case in point, it is not possible to file in the High Court an action on behalf of all children to protect them from, say, the use of specific forms of punishment, although action may be initiated on behalf of individuals.

TABLE 3

A typology of rights

			CLAIMANT		
			Implicit rights	Explicit rights	
	Outcome			Claimed	Not claimed
GRANTOR	Applied Universally		1	2	3
	Applied selectively	Anticipated	4	5	6
		Reactive	7	8	9
	Not applied		10	11	12

Rights fall into two broad categories, labelled herein as *implicit* and *explicit.* The category of implicit subsumes those which have general acceptance as societal norms and which, although possibly underpinned by legislative fiat, express a common understanding about social relations and practices. Items in this category may be regarded as *moral rights.* These are difficult to specify and measure, because they include subjective and emotional relations. In contrast, explicit rights includes those practices which are specific and contestable by reason of the characteristics or situation of the claimant. It is mainly this type of rights that is used in this inquiry to compare one period with another. Many practices now regarded as implicit rights have over time been

transformed through claims made for explicit rights. For example, the right to schooling is no longer contestable in New Zealand, because it has been accepted as a societal norm. Explicit rights can be operable only when they are claimed and, in this sense, they remain abstractions until put to the test. So far as the claimant is concerned, we can identify these three conditions: normative or implicit rights; claims for explicit application; default on the chance to claim.

At the simplest level, there are four possible ways in which the grantor may respond to these claims for rights. Firstly, they may be unconditionally reciprocated as part of the social and moral contract, based on the expectation shown in the first row of Table 3 that they be applied universally. An example of a universal implict right shown in cell 1 of Table 3 is the child's right to parental love and care. An explicit universal right in New Zealand is payment of a cash benefit to the caregiver of each child. That may be claimed or not claimed, as depicted in cells 2 and 3. Secondly, the response may be to apply the rights selectively. Such practices can be carried out in two ways, either by rule, which is called here the *anticipatory* mode, or on a case-by-case basis, called here the *reactive* mode. Selective application of rights by anticipatory rule is usually called discrimination. Handicapped children, in addition to their universal rights, may attract rights because their special needs are implicit in their dependency upon others, thus falling in cells 4 and 7. An explicit right to a cash benefit may have been anticipated by the social security system, cell 5, or the system may act reactively to special claims, cell 8. In both cases, the claimant may be unable or unwilling to make the claim, so that cells 6 and 9 apply. Initiatives to establish rights at both the universal and selective levels may be taken by the grantor. Finally, claims for rights may not be recognised. Although this level of reciprocity is treated as a single response, in reality it covers further combinations of attributed motive and type of response ranging from indifference, through considered rejection to active suppression.

These ideas about children's rights form the basis for elaborating and understanding the way children have been governed in New Zealand. As the inquiry proceeds, reference will be made to this typology and its associated

concepts as a way of expressing the nature and outcome of specific issues, policies and rights. Given that widespread usage of the notion did not appear here until the 1970s, until that period is dealt with in Chapter VIII the principal mention of rights *qua* rights is in each chapter conclusion. This chapter ends the theoretical background to the inquiry. Considerable detail has been given in these three chapters about the design of the study, the construct of social policy and that of children's rights. Much of this has been at a high level of abstraction. The task ahead is to use those ideas in a way which makes a developmental account of policy for children in New Zealand meaningful and plausible.

CHAPTER IV

THE CHILD AS CHATTEL, 1840—1879

This chapter considers the first forty-year period of Pakeha colonization and those aspects of the status of children that led to the proposition that children were generally bereft of explicit civil, political and social rights. In the absence of those rights, they could be considered *chattels* of their parents or guardians during this period. The first section describes the social context and the second section deals with the legal capacity of children in various areas. The third section considers those practices which became the foundations of policy for children in general, and for unwanted and awkward children in particular. As residential care was the common response, the origins and the growth of state and non-state orphanages and industrial schools are reviewed in detail. The chapter closes with a summary of its main points, of policy and the rights of children.

THE SOCIAL CONTEXT

Prompted by the memoirs of the immigrant clergyman Henry Harper, Graham (1981 :133) asked the question of what it was like for Pakeha to grow up and live in a country without an obvious historical past. It has a fundamental bearing on the matters discussed in this section. Of most interest are the characteristics of the immigrant pioneers, the values, attitudes and beliefs which they held, and the way in which these were expressed and adapted. Together with situational factors, this adaptation eventually created a unique society. Despite wide regional variation, the colony was essentially British and was to maintain strongly those ties until the 1960s (Dunstall, 1981: 398). By

1880, however, distinct changes were apparent. The ratio between *colonials*, those Pakeha born in New Zealand, and *colonists*, the immigrants themselves, reached parity in that year. The potentiality for an indigenous Pakeha pattern was gathering momentum.

It is no surprise, therefore, that early practices concerning children were rooted in contemporary British values and ideas overlaid with strategies developed in other colonies, principally Australia. But this period, 1840 to 1879, was a time of experimentation and quickening change in the social position of children. The degree of those shifts of attitudes and practices is demonstrated when in Chapter IX earlier periods are compared with the present.

Maori childhood. To describe fully the meaning and position of children in pre-colonial Maori society is beyond the scope of this enquiry. To attempt a brief description, the starting point must be to highlight the tightly structured social organisation of the Maori, with its features of ancestor-based, ambilineal descent. While this feature had some consistency, it is now accepted that it is misleading to generalise about other features of Maori life because of the wide variations between and even within regions (Davidson,1981: 27; Owens,1981: 28). Moreover, in the seventy years from Cook's explorations to annexation, trader and missionary influence had already begun that fatal impact of European contact. The overall changes in Maori society were extremely rapid and have to be compared to a baseline knowledge that is fragmented and compiled retrospectively in the Pakeha "scientific" mode.

In a kinship-based society of this kind, roles and relationships were predetermined by status and rank. While birthparents contributed much of that ascribed status, it was not an essential pre-condition to achieving a change in rank. Best (1927: 542), in his history of the Tuhoe, tells the story of a child "of rank" being captured in battle, for it was accepted that children would accompany war parties. Of captured children, those of rank may be ransomed, and others enslaved, or, more rarely, eaten.

The Maori word for children, *tamariki*, literally *little prince*, illuminates their position in that society. Young adulthood was preceded by three distinct periods. At birth through to about age three years, or the birth of the next sibling, the infant was mother's companion and indulged by all adults. From three through to about eight years of age, infants would be forced more into the play and special activities of children. Around this stage, through to puberty, more responsibility as carers of young children and more household tasks would be expected of them. Boys were treated differently from girls. "Every child was regarded as the child of the *hapu*, and parents tended other children as well as their own: boys were never thwarted lest their spirit as a warrior be broken, their uncles and grandfathers taking special pains in their training" (Andersen, 1907: 413).

The exchange of children of the hapu, a practice that Pakeha and their institutions largely misunderstood, fulfilled a vital functional and symbolic practice in tribal society. The average life expectancy for pre-European Maori is estimated at thirty years, with a wide regional variation. "Old age was reached at forty, and . . . few people would survive long enough to become grandparents, and the extended family and frequent adoptions would ensure that children would be cared for when their parents died" (Davidson,1981: 8). A Maori view emphasises the imperatives of those practices.

> The placement of children was once the means whereby kin group or whanau structures were strengthened. The child is not the child of the birth parents, but of the family, and the family was not a nuclear one in space, but an integral part of a tribal whole, bound by reciprocal obligations to all whose future was prescribed by the past fact of common descent. Children were best placed with those in the hapu or community best able to provide, usually older persons relieved from the exigencies of daily demands, but related in blood so that contact was not denied. Whakapapa (recited genealogies) were maintained to affirm birth lines, but placements were arranged to secure lasting bonds, commitments among relatives, the benefit of children for the childless, or those whose children had been weaned from the home, and relief for those under stress. Placements were not permanent. There is no property in children. Maori children know many homes, but still, one whanau. 'Adopted' children knew birth parents and adoptive parents alike and had recourse to many in times of need. But it follows

> too that the children has not so much rights, as duties to their elders and community. The community in turn had duties to train and control its children. It was a community responsibility. Discipline might be imposed on a child by a distant relative, and it was a strange parent who took umbrage (Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1986: 18-9).

Finally, Maori children and young adults were susceptible targets in the colonising and proselytising efforts of the Pakeha. Protocol negotiations were a matter for the ariki and kaumatua but it was the younger people and slaves who were the most responsive and likely to be permanent converts to Christianity. They were the ones encouraged into the mission schools. Church of England missionaries also followed the theory of Bishop Marsden that the "arts of civilization" should be taught first, with the Christian doctrine to follow (Owens, 1968). The teaching of Christianity, according to Binney (1969: 152), was not ". . . divorced from a European framework", and the creation of denominational, state-subsidised Native schools early in the piece, was part of Grey's "civilising" plan, covered in the next section of this chapter.

Children as immigrants. Pakeha children made their first significant appearance in Aotearoa with the founding of the missions. After that, two features stand out in relation to colonization; children were the most numerous age grouping of the migrants and the most vulnerable to the hazards of the sea journey. Infant mortality rates for Western Europe had begun to fall about 1750, infanticide was less commonly practised, and it is possible that there was a rise in the birth rate (Sommerville, 1981: 150-1). By the mid-nineteenth century, better nutrition, the sanitary ideal and medical adventurousness, had further improved rates of survival. The large family size of the married immigrants meant that by 1867 there were six children for every four adult females. By the end of the period there were ten children for every four women (see Table 9).

Shipboard disease struck down children mercilessly. An account compiled by Arnold (1981: 55-61) of the voyages of the *Mongol*, which left Plymouth on 23 December, 1873, for Port Chalmers, and the *Scimitar*, departing the following day, showed the perils of close proximity in sub-standard conditions.

Of the 313 emigrants on the *Mongol*, 125 were children under twelve years. The *Scimitar* carried 430 people of whom 165 were children. Measles and scarlet fever had been about at the Plymouth depot and, after a short time at sea, both were infecting the *Mongol* passengers. At the end of the voyage fifteen children and one adult had died; others were to die later in quarantine. The death rate for the *Scimitar* was even higher and, mainly because of measles and scarlet fever, there were twenty-six deaths on board, the eldest being a girl of seventeen. Apart from the confined shipboard conditions, the travellers' ordinarily low resistance was exacerbated by dampness and poor diet. "The ship's provisions were also ill adapted to the large number of children, and many of them did not take well to the basic diet of preserved meat and hard ship's biscuit. Supplies of food suited to the sick were quite inadequate" (Arnold, 1981: 58). The reception the *Mongol* received by the port quarantine authorities was one of alarm, and when a party from it embarked for Lyttelton, the Canterbury Board of Health tried unsuccessfully to enlist governmental support for further quarantine (McLean, 1964: 42-9).

These episodes were atypical only by the high death rate of the"fever ships", known to be infected at their port of origin. In other respects, most sea journeys were hazardous for all, and for children especially. There were, however, rewards of a new and enhanced way of life for those who survived.

Pioneer life. Relations between family members took a rather different turn in the new world. "Indeed, for an immigrant family, the mere escape from the corroding effects of poverty, and from the disrupting demands of their English employers, must have resulted in a new level of family life", wrote Arnold in his vivid account of the liberated life of *The country child in later Victorian New Zealand* (Arnold, 1982). At a time when the notion of dependence, protection, segregation and delayed responsibility for children was beginning to take root in Britain amounting, Arnold thought, to a "rescued" childhood, New Zealand country children enjoyed a liberty and equality of relations with parents and adults quite foreign to the English countryside. In support of his contention, he provided anecdotes by Edward Wakefield testifying to a quality of rough and

tumble, and unsupervised freedom that gave colonial children a maturity and confident mastery of their environment far beyond those left at "home". From his extensive research into New Zealand immigrant families, Arnold (1981) was able to construct a vignette comparing the oppressed life of the English labouring-class family with that of the yeoman farmers they became in New Zealand. The latter picture was one of increased family sentiment, solidarity, and optimism in the future.

In his article, Arnold (1982) raised the question of how his picture squared with my portrayal of the child of the time as a chattel of its parents (McDonald, 1978: 45-7). The answer lies in a reformulation of the question. The one I am asking, of the social values and attitudes which determined children's rights, must find its expression in the policies of the state. Between 1840 and 1879, except for awkward children the New Zealand state had little to say on the matter. Protectionism was beginning in only a small way, as shown in the plea by a Mr Bromfield to the Governor to restrict the employment of children in flax milling (AJHR, 1870: D.14). Thus, in this regard the Arnold and McDonald theses are not irreconcilable; some children, possibly most of them, could enjoy a vital, high quality of life irrespective of governmental ambitions. There is a further argument to be made that by accepting Arnold's thesis, my own case for the existence in settler society of two worlds of childhood is strengthened. A minority of children were abandoned, neglected or got into trouble, with the result that policies to deal with this sector were amongst the first extensive state provisions for children in New Zealand.

Convict boys. Pakeha have taken a smug satifaction from the belief that, unlike the older colonies, notably Australia, their country was never a destination for felons transported from Britain to serve prison terms and to provide a source of cheap labour. Lieutenant-Governor Hobson had asked in 1840 that the Colonial Office overturn Clause 12 of his brief forbidding the introduction of convicts, only to be rebuffed by Lord Normanby whose opposition was "fixed and unalterable" (McCarthy, 1978: 27). In the event, there is no room for smugness when one considers the human cargo of 122

boys from Parkhurst Reformatory, England, disembarked by the two ships, the *St George* and the *Mandarin*, in Auckland in October, 1842, and October, 1843, respectively. The *St George*, carrying 92 Parkhurst boys, was the third immigrant settler ship to arrive in Auckland. Only a slower voyage prevented it being from being the first, ahead of the *Duchess of Argyle*, which left Britain six days later, and the *Jane Gifford*, fifteen days later.

The export of children from England had been carried on since the early seventeenth century. Colonial expansion had created a demand for immigrants and some colonies were prepared to take people regardless of their status or backgrounds. In the case of children and young persons, it was not possible to distinguish clearly between those sent as assisted migrants under voluntary charity society schemes and those transported as part of their "punishment". Officials were of the opinion that the hope of transportation or resettlement greatly improved the morale of young people in care, for many of whom it offered an escape from a hostile environment and an unrewarding future alienated from family or friends (Pinchbeck and Hewitt, 1973: 546-7).

Parkhurst Reformatory was established by Act of Parliament in 1838 as the first English prison for juveniles. Four years later, the resettlement venture was begun and until 1853 when the scheme was abandoned, a total of 1,498 boys were sent to Australia (1,376) and New Zealand (122). The scheme was of mixed success.

> The Parkhurst boys were sent to New South Wales, Van Diemans Land [now Tasmania], Western Australia and New Zealand. The most successful were those sent to Western Australia, where the Government appointed a Guardian of Juvenile Immigrants to look after them. . . . High praise was given to the boys by the Governor of Van Dieman's Land, but they were not popular in New South Wales or in New Zealand. . . . Gradually, the whole idea of sending young criminals to the colonies dropped into disfavour and was ultimately abandoned (Pinchbeck and Hewitt, 1973: 548).

A change of British law in 1853 substituted penal servitude in place of transportation for sentences less than fourteen years. As Pinchbeck and Hewitt

explained, juveniles were usually sentenced to lesser periods, thus practically putting to an end juvenile transportation (1973: 549). In colonies which were longer established than New Zealand, resistance to child migrants, dependent or delinquent, arose from local child rescue movements who wished to preserve limited employment prospects for their own charges (Rooke and Schnell, 1982: 93).

A few scattered references to the Parkhurst boys are to be found. Along with the military, they were noted as excluded from the Pakeha census return made for Auckland in 1848. Edward Jerningham Wakefield certainly took no steps to suppress their presence, when for commercial purposes he might have been tempted to do so. Indeed, he gave a light-hearted account of their anti-social activities, and whimisically used them to reinforce his opinion about the lack of "society" in Auckland, at that time when he thought families

> . . . alienated from each other by vulgar quarrels and recriminations. . . . As an improvement to this state of society, 91 juvenile delinquents from the seminary at Parkhurst, in the Isle of Wight, sent out by the Government, had arrived at the capital. Some of these were to be liberated at once; others were to be bound to a certain term of apprenticeship. It was not long before these ingenuous youths showed their skills as instructors of the natives. I have heard it more than once described, by visitors from Auckland, that there were known to places of rendezvous outside the town, where the boys used to meet the natives coming into town to trade at the stores, and teach them how to pilfer with secrecy and comfort. A meeting was held at night, as the natives returned to their settlements, for the division of booty; and the *Maori*, unable to keep the secret any longer, bitterly complained that the young thieves invariably managed to cheat and or rob them of all that they had stolen on joint account. The natives have probably become weary of getting so small a share of their own plunder; as some of the Parkhurst seedlings have lately been caught breaking into the houses of the settlers, independently of their simple allies (Wakefield, 1845: 315-6).

After Wakefield's 1845 snippet, it seems convict boys all but disappeared from New Zealand history books until McCarthy (1978) devoted a chapter to them. The incident was brought to public attention in again in 1979 in a somewhat sensationalised magazine article (Trickett, 1979).

FOUNDATIONS OF POLICY

The social organisation of the new colony in relation to health, education, welfare, law and order, and the subjugation of the Maori, were major preoccupations of government. In the absence of traditional forms of support, ranging from kinship networks, parish relief, and philanthropic agencies through to the bounty of the gentry, the state was forced to fill the gap. In retrospect, the proportion of parliamentary and governmental time and effort, and voluntary charitable activity on issues concerning children then, compared with now, seems extraordinarily large. Unwanted and difficult children were a problem to colonial administrators from the earliest days, as the section on convict boys shows, but practices regulating the populace impacted upon all children. Further, the practices introduced showed that quality of dualism which is inherent in all ostensibly benevolent acts; to alleviate the deprivation of dependency is also to gain control over the dependent. Nowhere was this better expressed than in the English Poor Law, the origin of which has been described as ". . . a combination of social amelioration and police deterrence" (Bruce, 1961: 23). The harsher practices of the *New Poor Law* of 1834, were the spur for the disaffected working people who made up the bulk of the migrants (Arnold, 1981: 249), and the *Poor Law Amendment Act* itself made provision for the parish to raise and disburse money for the purposes of emigration (Pinchbeck and Hewitt, 1973: 554). Unemployment was deemed the fault of the individual, and the poor lived in fear of "falling on the parish" and the stigma of dependency.

Although the social fabric was markedly different, the inventions to meet social need showed the influence of old values and attitudes carried to the new world. These values have been characterised by Oliver as those of "benevolence, discipline and deserving", and he went on to explain:

> All three are direct British inheritances, and their occurrence may be easily seen in any English-speaking country where, at that time, welfare activities were emerging. The form they adopt in New Zealand is very

> much a nineteenth-century form, shaped by the hard and soft aspects of that century's ways of dealing with the needy: the spirit of the New Poor Law and the gospel of philanthropy. Discipline, or social control, is perhaps the basic value; it permeates the other two (Oliver,1977: 6).

In an era when life could be harsh and uncertain for most people, the burden of discipline endured by children as the recipients of charitable aid or character reform, was in physical expression little changed from adult treatment. It differed mainly because children were thought to be "redeemable", and were expected to show gratitute for the paternalistic deprivations which would alter their behaviour. Also, unlike adults, children were usually assigned to their moral saviours for the term of their dependency.

Under provincial government, education and health services developed sporadically because the provinces varied widely in resources and ideologies. A lead in education was given by the Nelson School Society formed in 1845 by a non-sectarian group of settlers, and when a Nelson Provincial Council was formed in 1854, it took over the society's schools. Assistance by way of public funds to church schools and religious instruction in schools were fierce issues that each province had to resolve. As Ewing put it, "It will be seen that from the different beginnings, and by somewhat different routes, all the provinces came to much the same conclusion. Sentiment in favour of universal education grew everywhere" (Ewing, 1969: 17-8). Shortly after provincial government was abolished, the *Education Act, 1877*, caused schooling to be free, secular and compulsory for children between seven and thirteen years, and discretionary from five and up to fifteen years of age. The slow start to universal attendance and the consequences of this landmark legislation are discussed in the next chapter. The policy implications of schooling for the "first world of childhood" are germane to this inquiry but its process of development is tangential. Of more interest is the provision made for charity cases, and provisions for special education. That theme is pursued in this and subsequent chapters.

Health policy during this period also fell on local bodies, either boards of health or hospital and charitable aid boards. The former were concerned with

public health, quarantine, drainage and sewage and the like. A great deal of attention was given to children as prophylactic barriers in the fight against contagious diseases because they could not object to vaccination. Indeed, the compulsory vaccination of children against smallpox enacted in 1863 was the first instance of compulsory benevolent assault upon children sanctioned by the state for utilitarian purposes. A private benefit was conferred for public protection. The Act provided that a public vaccinator should be appointed and that every infant be vaccinated before the age of six months (McLean, 1964: 237-40).

Hospitals were the first state-funded institutions in the colony, being established in 1846, in Auckland, Taranaki, Wanganui and Wellington. Of particular interest to the student of welfare policy is the early connection between health and charity in the shape of the hospital and charitable aid boards set up in the provincial period. These were put on to a standardised footing in 1885 with the passing of the *Hospital and Charitable Institutions Act* (Chilton, 1968). Charitable aid boards, of which there were several variations, some separate but co-operating with hospitals, were together with church agencies the principal source of relief for indigent children. Many ran their own institutions, and all were potentially liable for the maintenance of dependent children boarded elsewhere. Their centrality to provisions for children until 1938 is affirmed at many places in this inquiry. The North Canterbury Hospital Board's home for children whose mothers were in hospital, begun as a charitable aid board home, was still functioning in the 1960s (Luckock, 1987).

Children's Legal Capacity to 1879

The laws of England were the laws of New Zealand, except for that short period when administratively the new colony was deemed to be part of New South Wales, Australia (McClintock, 1958: 98-117). Retrospectively, the *English Laws Act, 1858*, provided that the laws of England as existing on 14 January, 1840, applied to New Zealand (Seymour, 1976: 5). A feature of early New Zealand legislation is the specificity and detail with which issues were

dealt. Before the time of the *regulation*, that governmental device that allows cabinet ministers to bring down regulatory prescriptions, the law was complete within each statute itself. The intent of the lawmakers was much easier to ascertain, backed up by parliamentary debate, than the relative obscurity of regulations promulgated at any time after the event. This is one dimension upon which early colonial law differs from that of the late nineteenth and twentieth century, when it is more common to find broad principles enunciated, and questions of administration and practice left largely to the civil service to determine. Laws were also quite specific about penalties. For example, the criminal statutes concerned with larceny and offences against the person, and even the *Neglected and Criminal Children Act, 1867*, allowed magistrates to order a whipping for boys under sixteen in addition to other penalties. How some of those early laws governed children is now outlined.

Dependency. Children received early attention in the legislative history of New Zealand, as persons presumed to be unable to care for themselves and, therefore, a burden to others when family support was missing. Lieutenant-Governor Grey, ". . . with the advice and consent of the Legislative Council", enacted in 1846 *An Ordinance for the Support of Destitute Families and Illegitimate Children*. While there has been doubt about the extent of its application, there is no doubt about its influence upon later legislation. Derived from British Poor Law principles, it was of that type of legislation now known as filial responsibility laws. Such laws spell out the obligations of relatives to care for their kin, the power of courts to make orders, set rates of maintenance and to enforce compliance. In this case, liability extended over five generations, for males and females; a man or woman could be held financially responsible for the support of grandparents, parents, spouse, children and grandchildren.

Although this Destitute Persons Ordinance figures frequently in the history of income maintenance provisions, rarely has it been accorded its full title and even less has its full significance for children been made plain (for less than adequate treatments see, for example: W. B. Sutch, 1966; 1969; Koop--man-Boyden and Scott, 1983: 98, 118, 216; Social Security Department, 1950:

21). It was not simply an instrument to secure support for the indigent. It spelt out in clear terms the authority of the court, with the consent of the mother if living and sane, to give custody of any illegitimate child under the age of fourteen years to any "fit person". Similarly, any child who was the subject of a maintenance order could upon attaining fourteen years of age be bound to an apprenticeship, with the consent of either parent, if living and within New Zealand. Both of these provisions were drawn from Poor Law precedents which acted in that dualistic fashion to facilitate support for the individual and to maintain a steady social order. The Ordinance was repealed and its provisions re-enacted and extended by the General Government as the *Destitute Persons, Illegimate Children and Deserted Wives and Children Act,1877.*

The *Master and Apprentices Act, 1865*, repealed the apprenticeship provisions of the *Destitute Persons Act, 1846*, and illegitimate and orphaned children could be assigned to apprenticeships by order of the court. As a forerunner to later legislation, it also provided that with the consent of parents, deserted children could be apprenticed. In the event, the provision for dealing with awkward children was soon overtaken by those of the *Neglected and Criminal Children Act, 1867.*

In moves in advance of many other places, the balance of rights between husbands and wives in the matter of custody, was altered in 1860 by the *Married Women's Property Act.* The prime intent of this Act, in a frontier climate of fragile marriages, was to enable deserted wives to handle their own affairs. It gave the power to women to act at law as a *femme sole* and, contrary to long-standing practice, opened the way for them to become legitimate guardians to the exclusion of their husbands. That was specifically provided for in an amending Act of 1870.

A short-lived 1856 amendment to the *Marriage Act* allowed minors to apply to the Supreme Court for permission to marry when the father was *non compis mentis*, or unreasonably or from undue motives had withheld his consent. Clearly in advance of its time, it was repealed in 1858.

The most far-reaching policies of all were those dealing with dependent and delinquent children, and that is the topic of the next section.

Governor Grey and the Industrial School Ideal

Industrial schools in New Zealand began as a noble ideal under Grey's first administration and effectively went out of existence in 1918 as despised, feared and out-moded institutions. For nearly seventy years, they were the main instrument for dealing with neglected and delinquent children. This section sets out the part that Governor Grey, and the class which he represented, played in promoting the ideal of the industrial school, the likely formative influences upon his belief that they were in the interests of the children of the poor and the key to a stratified and stable society, and it concludes with a review of the impact of these schools during the period being considered. A special study is included in Chapter VII of the history of the Wanganui Industrial School which Grey endowed and was later to defend.

It seems generally agreed (Butchers, 1932; Davis, 1966; Sutch, 1969) that Grey held a life long belief in the power of the Christian church to act as a acculturating agent both upon Maori people and the working class. Indeed, the fact that most of the targets of of his church-based education schemes were Maori and Pacific Island people has led to the claim that he supported the churches primarily as a Europeanising tool in the colonial enterprise. While there may be some truth in that claim, there seems no doubt that he had a great respect for the socialising influence of both education and the Church and, wherever possible, preferred to see the two combined. In a lengthy speech to the House towards the end of his career he retrospectively traversed his ambitions for the civilization of the Pacific. Pointing out that he was in the 1850s not only Governor of New Zealand but also of several Pacific Islands, Grey told how authorities in Fiji and Tonga had asked him to facilitate their annexation to the British Empire, and how he had tried to dissuade Great Britain from surrendering New Caledonia to the French (NZPD,1876, XXI:

596-8). At that time

. . . he had the impression also on his mind that the duty of Great Britain, viewed as a whole, was to endeavour to spread Christianity throughout the civilized world. . . . Knowing that he (Sir G. Grey) firmly believed that it would be possible for Great Britain, by means of missionaries from New Zealand, *to civilize the inhabitants of the Pacific Ocean,* and he showed the then Bishop of New Zealand the propriety of his visiting those islands in a man-of-war. . . . As part of that plan he determined then to establish in New Zealand schools, which would not only provide for the instruction of her Majesty's subjects of all races who might inhabit these islands, but which enable teachers to be trained for the other islands, children to be brought from those islands and educated and supported here, and which would together furnish the materials for the great missions of the three bodies, the Roman Catholic body, the Wesleyan body, and the Church of England, throughout the whole Pacific Ocean. . . . It was absolutely necessary that theological schools should exist in the colony; and though he was most earnest in his desire to see a system of secular education firmly established, yet he could not shut his eyes to the fact that, if they valued Christianity they must raise a race of Christian teachers (NZPD, 1876, XXI: 595-7. Emphasis added).

In this respect , he was no more than the liberal product of his time in which the power of education as a vehicle for rescue and reform had been well demonstrated in the United Kingdom, and especially in Ireland. That view is reinforced by McClintock with his observation that Grey's army service in Glasgow and Ireland ". . . in all probability coloured his thoughts with the humanitarianism of the day " (McClintock, 1958: 194). Moreover, his interest in education " . . . was an essential ingredient in his liberal creed which sought the progressive improvement of the masses, politically, morally, and spiritually" (Davis, 1966: 127). His association in Ireland with his distant uncle, Bishop Whately, would have given him more than the usual exposure to the gentlemanly concerns of the proper duty of charity and methods of dealing with the "dangerous classes".

CHURCH, CHARITY AND EDUCATION

As John Donne preached in St Paul's in 1628, "The duty of charity . . . was

'a doctrine obvious to all' " (Bruce,1961: 31), and for some religious orders that took the form of shaping minds and characters while saving children's souls. An organised approach to charity schooling was given a boost in the eighteenth century through two factors . The first was the generally improving economy ready to absorb the able-bodied young, and the second factor was the religious policy of the day to save children from Roman Catholicism.

> To Anglican and Dissenter alike Rome was the parent of ignorance and sedition. Separated by a deep cleavage in doctrine and politics they were one in their desire to curb its power. . . . To prevent the spread of a religion, ' absurd in itself and oppressive to the liberty and the souls of men', Anglican and Dissenter made common cause to rescue the children of the poor from the 'Great Devourer' by establishing charity schools on their behalf." (Jones, 1938: 35)

The work of the German Hermann Francke at Halle was to have an immediate impact on the English movement in general and the Society for Promoting Christian Knowledge in particular, under the banner of "food for the soul as well as the body".

> . . . a rigidly ascetic method of instruction was evolved. In a school day of seven hours more than half was devoted to the religious discipline of Bible reading, catechism, prayers, public worship and pious exercises. Part of the remainder of the time was given to the godly discipline of labour (Jones, 1938: 37).

Sunday schools. These schools existed before the late eighteenth century but came into large scale existence as a system of schools owing mainly to efforts of two Anglican reformers, Robert Raikes and Sarah Trimmer.

> The Sunday school movement, one of the several expressions of the philanthropic spirit which characteristed the later years of the eighteenth century, was a revival and a continuation of the earlier day charity school movement. It supplemented the inadequate number of schools for the children of the poor set up in the early half of the century. It was a voluntary movement, financed, as was the earlier movement, by the subscriptions and donations of the middle classes . It was a rescue movement, designed primarily to save the souls of the children of the very poor. Like its forebear it was concerned, primarily, with the towns; its methods of instruction followed closely on the lines laid down

> by the charity schools; its curriculum, like theirs, was based upon the bedrock of Bible and catechism. The difference between the two schools lay not in the impulse which prompted them nor in the methods which established them, but in the limitation of the instruction given in the Sunday schools to one day in the week. . . . Child labour, an established practice when Defoe wrote in the early days of the century, had continued in spite of the efforts of the educational reformers to keep children at their books until they were old enough for apprenticeship. Throughout the eighteenth century children from six to twelve years of age were to be found working in the fields and the mines and in domestic industry; indeed, one of the constant complaints brought against the charity schools was that they diverted cheap and unskilled workers from the labour market. But while child labour was no new thing, the increase in the number of children who lived to grow up, and of those engaged in industry, presented a new phenomenon at the end of the century (Jones,1938: 143-4).

Schools of Industry. Sunday schools captured the ragamuffins and working children on the Sabbath. For the rest of the working week those who could not find places in charity schools or were without work, were a serious problem especially in districts where work was short or manufacturing not yet developed. "Idle and untrained, their plight appeared to social reformers at the end of the eighteenth century to demand a more sustained and intensive training than the Sunday schools were capable of giving. Hence towards the end of the century the industrial school appeared again in full sail" (Jones, 1938: 155).

In 1795, Prime Minister Pitt had attempted to amend the Poor Law provisions to require parishes to maintain schools of industry for the compulsory attendance of all children whose parents were "on the rates", that is, receiving parish relief. Greed, and the growing demand for child labour by factory owners, saw that Bill fail because of the competition between the working school and the workshop. In the short term, the workshop system prevailed and in those schools which were already established little effort was sustained to combine a general education, industrial training and productivity. They tended to be workshops in which a minimum amount of time was given to instruction in reading. Furthermore, the middle classes, those whose donations and patronage supported charity schools and Sunday schools, saw little virtue

in the expenditure of charitable aid to industrial schools when the discipline of labour could be learnt equally well in the workshop or factory. The pleas of the social reformers that the moral climate of the adult workplace was debilitating for children were countered by the existence of the Sunday school as the due reward for the children of the poor who, above all else, had to be trained to endure a life of industry . The new wave of industrial schools faltered and failed simply because they were not financially self-sufficient.

Some schools, however, were patently successful for the time that their founders were able to devote their energies to them; as less able or interested leaders took over, schools tended to regress to institutions indistinguishable from the parish poor house. An account of two innovations by women she describes as ". . . enthusiasts who could make bread out of stones and the desert to bloom as the rose" was given by Jones (1938 : 157). The first one, Sarah Trimmer, was a religious zealot, writer and reformer who, at her school in Brentford believed passionately in the need to combine a religious and moral education with work training. Next were the sisters Hannah and Martha More of the Evangelical party. Hannah More is credited with the "civilising reform" of the Mendip villages in Somerset, principally using the device of the village industrial school whose goal, in More's words, was to ". . . train up the lower classes to habits of industry and virtue." Jones noted, somewhat wryly, that in the More schools writing was considered an unnecessary accomplishment and was, therefore, forbidden.

The appearance during the eighteenth century of three types of schools for the children of the poor led inevitably to an ordinal ranking between them. Charity schools, with an emphasis on a general education and no requirement for pupil productivity, produced young people whose attainments matched the literate and numerate skills required for the burgeoning retail trade. Sunday schools became a type of proving ground, through which children could be identified and classified. The able and the deserving were recommended to charity schools and, consequently, prospects of superior working class positions, while the dull and undeserving were relegated to industrial schools

with factory work or menial domestic service their ultimate vocation.

Ireland. Terrain, population distribution and social and economic contexts led to very different developments in charity schooling in England, Scotland and Wales. Nowhere, however, was the battle for the soul of children as different, as fierce, prolonged and violently partisan as in the fourth country of the Kingdom, Ireland. As part of the deliberate policy to suppress the Roman Catholic church and to punish the rebellious Irish, land confiscation and discriminatory tenure laws that reduced rural Catholics to an impermanent citizenship and an uncertain, fragile economic existence, were followed in 1709 by the forfeiture of the right to a Catholic education. The Act of that year not only forbade instruction by Catholics but also put a price on the head of every unregistered priest and illegal schoolmaster.

Irish Protestants, recognising that education would be the best instrument for conversion of their countrymen, looked to charity or parish schools for fulfilment of that task. A lack of clergy and money forestalled the realisation of that ambition until the continued strength and growth of 'underground' religious teaching forced the government in 1733 to support a new attack in the form of the *Incorporated Society in Dublin for Promoting English Protestant Schools in Ireland*, known colloquially as *The Incorporated Society*. A body headed by a prestigious Board, the Society focussed its attention firstly on the rural Popish strongholds and secondly, with the aim of self-sufficiency, on a type of school which was to combine industrial training with religious and secular instruction.

With a few exceptions in urban areas, the *Charter schools*, as the Society's institutions were known, failed to thrive or to attain their mission for two principal reasons. Firstly, the schools were in the main miserable 'hell-holes' of deprivation and ignorant abuse. The motive of productivity led to the exploitation of child residents as cheap agricultural and cottage-industry labour by the entreprenuerial farmer-managers who were forced to supplement their low wages from the work of their charges. In turn, such conditions of employment attracted only those who had little or no pedagogical training

themselves. Inspectors and visitors to Charter schools over the first fifty years of their existence painted the same awesome portrait; malnourished, ill-clothed and sickly, stunted children; surroundings of filth and neglect worse than the primitive dwellings from whence the pupils had come; a routine of unremitting and menial labour with little or no provision for either religious or secular basic education. Indeed, from the time when the schools attracted the attention of John Howard, the father of prison reform, during his first tour of Irish prisons in 1779, it can be seen in the reports of his periodic inspections over the next nine years that he was so obsessed by the material conditions that their educational purposes and standards were completey overshadowed in his enquiries. [1]

Secondly, the very weapon of the oppressors was in turn used to ensure the cultural survival of the oppressed. The tenacity of the Roman Catholic population to secure an education for its children helped in the growth of a large

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1. The truncated account given here lacks the emotional impact of these original passages in the source:

> Outwardly, the schools gave little warning of their internal condition. The strong buildings and high stone walls gave them a prison-like appearance, "well adapted for their purpose", as the Society stated in earlier years. Inside filth reigned undisturbed; the walls and floors reeking with dirt and swarming with vermin, and the infirmaries, used as pigsties or fuel-houses, loudly proclaiming that they had not been cleaned for months, prepared the visitor for the close and offensive bedrooms, for the disgusting beds and the filthy, torn and rotten sheets. In these beds of ticking stuffed with straw three or more children were commonly huddled, gaining from close bodily contact at night the warmth denied them in their working day.
>
> With some few exceptions the same tale was repeated of all the schools with sickening detail; scarcity of water, no privies, scanty and unchanged linen, and clothing so ragged that in many of the schools the children were almost naked. Even worse was the condition of the puny, ill-fed bodies so badly covered. Disease arising from the insanitation and neglect was rife; limbs were deformed by the long hours of work at the large spinning-wheels, bodies were wasted by the perpetual use of saliva to moisten the flax in spinning. Skin diseases on the hands, the itch and scald head were common (Jones,1938: 247).

scale network of illegal schools, popularly known as 'Hedge schools' , which, to avoid detection were held outdoors and commonly in cribs or primitive cabins in the hedgerows. The success of this parallel system led directly not only to the failure of the Charter system but also to the establishment in Ireland of the the first State department for education in the British Isles.

The Ragged School Union. In the year in which George Grey came first to New Zealand, a fresh and powerful coalition of evangelical and humanitarian agencies made its appearance in Great Britain. The Ragged School Union, later to become the Shaftesbury Society after its founding president, Lord Ashley, the Earl of Shaftesbury, brought together a number of existing practices and institutions into a movement which was to become the cornerstone of the *child-saving era*. It looked for its saints and its supporters wherever they could be found, acknowledging the ideas of the successful *Aberdeen system* of feeding day schools and adopting John Pounds, the cobbler craftsman romanticised as the originator of industrial schools, as its own inspiration. For the first time, sectarian interests could be ignored as the child-saving agencies rallied around Shaftesbury's rhetoric. In brief, the union took schooling to the children of the poor and the homeless with renewed zeal, and now with the added clout of publicity and official backing . To it has been attributed the averting of the English Revolution, feared in the 1840s as an inevitable outcome of widespread deprivation and of a lack of loyalty to the young and untested Queen Victoria (Montague, 1904: 6-28).

The later influence of the Ragged School Union falls outside the scope of this inquiry but it must be noted that its ideals impacted on all the notable men and women who worked for the moral rescue of children in nineteenth century Britain (Bridgeland, 1971: 55-6). Politically, its aim was the *embourgoisement* of paupers and the working class in the interests of social control and social solidarity . It was a similar aim which Grey was to pursue in his civilisation of the colonies.

Until 1869 in New Zealand, the substitute care of dependent and delinquent children was, in keeping with Grey's ideal, wholly in the hands of church and voluntary agencies. That period is reviewed next.

NEW ZEALAND CHURCH SCHOOLS AND THE STATE

As part of colonial practice, Governor Fitzroy had seen to the handing over of parcels of Crown land to the established churches, for missions, settler congregations and cemeteries. Towards the end of his two-year term as Lieutenant Governor, Grey obtained consent from the Colonial Office to the governmental subsidy of denominational schools. Anxious to avoid the divisiveness wrought by Church of England domination in other colonies, it ordered that ". . . all sects were to be on an equal footing before the law" (Ewing, 1969: 12). It became an accepted practice in making land grants to the churches that the deed would specify the religious and educational puposes for which the transfer was made. Thus, the Bishop of a nominated diocese was named as the recipient of a parcel of land for the erection of a church, a school and associated activities. In a number of these cases, the deeds clearly specified that the school was to undertake ". . . the industrial training of the children of the poor", in the specified district. As well as access for Native children—as Maori were then called—places were to be reserved for deserving children from the Pacific Islands. The influence of the New Zealand Education Ordinance of 1847 in beginning a national denominational schools system, later to be overturned, has been well documented elsewhere (Davis,1966 ; Roth,1964). It was cited as the cause of immediate trouble because

> It resulted in a wasteful overlapping of effort and in resentment on the part of the denominations that were not early enough in the field to benefit from it, and also on the part of the secular school organizations which were denied any State assistance at all (Ewing,1969: 12).

What is of interest in this inquiry, however, is the fate of the charitable and industrial training ancillaries which were conditions of those state gifts. It

appears that none of these, even the specially endowed Native Schools, developed in quite the fashion anticipated by Grey. Part of the answer lies in the nature of the gifts. The New Zealand statutes for the nineteenth century are peppered with private Acts, regularising the sale of trust lands first given in this period for religious and charitable purposes. As development proceeded, the land allocated was often inappropriately sited. That is, a settlement may have failed to materialise or the church school and its garden ended up sited on the commercial high street instead of its proper place on the urban fringe. Most were in any case recognised as long-term projects, to grow as funds became available. Grant land and cash grants got entangled with other church property; property was sub-let, subdivided and sold, abandoned, amalgamated, and in one case, seized by Court order (AJHR, A5,1869: 9-17). While time reduced the chance of the recipients ever being called to account for the letter of the original deed, an early accounting was called for in 1869, with the commissioning of an inquiry into religious, charitable and educational trusts held directly under grant from the Crown. The reports of that commission provided an account of some of the industrial schools established between 1847 and 1869.

Early Grant-aided Industrial Schools. The Religious, Charitable and Educational Trusts Commission brought down three reports. The first, early in June, 1869, on Auckland Province, identified five trust estates operated as industrial schools by three different denominations (AJHR, A.5, 1869). The second report, submitted at the end of that month, dealt mainly with the embryonic Native School at Te Aute, and briefly with other religious and educational trusts in that province (AJHR, A.5a,1869). Industrial training was not usually called for in the trust deeds of Native Schools, but there was the expectation of it in Grey's plan of 1861 (AJHR, A5: 5, 1869). The third report, submitted in August,1870, covered the rest of the country. The six industrial schools reviewed in the Commission's reports are listed in Table 4, showing their auspices, locations, common names, land areas and dates of operation.

The allegations leading to the investigation appeared to be sustained and

TABLE 4

Crown Grant-aided Industrial Schools [a]

Auspices	Location	Name	Land area	Grants	Opened	Closed
Church of England	Parnell	St Stephens	40 acres	1850	1851	-
	Wanganui	Industrial School	250 acres	1851	1854	1863[b]
Roman Catholic	Takapuna	St Mary's College	376 acres	1850	1850	-
	Freemans Bay	St Mary's	4 acres	1853	-	1863
Wesleyan	Titirangi	Three Kings	824 acres	1845-54	1845	1869
	Grafton Rd	Wesley College	6 acres	1844	1844	1863

[a] Listed by the Religious, Charitable and Educational Trusts Commission, 1869-70. Shown by auspices, location, common name, land area and dates of operation.

[b] After which it became a denominational grammar school and is still operating. The trust deed was varied in 1952.

(Source: AJHR, A5, 1869; AJHR, A3, 1870)

> Although the Commissioners refrain for the present from forming any definite opinion on the subject of their inquiries, they would respectfully invite your Excellency's attention to the evidence taken concerning the Trust Estates respectively held by the Church of England, the Roman Catholic Church, and the Wesleyan Church, at St. Stephens, St. Mary's, North Shore, and the Three Kings, in the immediate vicinity of the City of Auckland, for (in terms of the Grants) " the education of children of both races, and of children of other poor and destitute persons being inhabitants of the Islands in the Pacific Ocean". Although between fifteen and twenty years ago, large and valuable Grants of Crown Land were gratuitously given to these institutions, and were supplemented from time to time by considerable sums of public money, each of them is at the present quite impotent for the purposes of the Trust and has been comparatively ineffective for some time past (AJHR, A5, 1869: vii-viii).

In regard to the school at Wanganui, the Commissioners wrote:

> This was a Grant of about one-third of the then existing town-site of Wanganui to the Trustees of one religious denomination, for the purposes of education. The whole of the land has been laid out in streets and quarter-acre sections, the former of which were shut up by the Grant and the latter abolished, and the extension of the town in that direction precluded.
>
> The rents of this estate have been appropriated to the erection of a Schoolmaster's house and grammar-school, except a small portion to the support of the school, which, though excellent of its kind, is not a fulfilment of the Trusts contemplated, inasmuch as the class of children apparently intended by the Grant to be benefitted, are not such as can afford to pay the fees necessarily payable to enable them to attend the School. Looking at the magnitude of the grant, and the loss which the people of the place have suffered by the diversion of the land from its original purpose, the Commissioners recommend that the land should, whenever practicable, be laid out again, and rendered available for Town purposes, and that the annual proceeds should be so appropriated as to give the inhabitants of every denomination and every class a fair share in the benefits accruing from the Grant (AJHR, A3, 1870: v).

What, then, had gone wrong? From the evidence of those appearing before the Commission, it seems that many factors acted against the fulfilment of the Trusts. Firstly, there was the matter of ready cash. If school buildings were erected, the possibility of rental income was reduced or ruled out. The lay trustees appointed for the Church of England establishments, for example, preferred to see the land developed through tenancy, and capital accumulated before a school was begun. That plan was followed at Te Aute, receiving the approval of the Commissioners in their second report (AJHR, A5a, 1869). Secondly, Maori land disputes and the military actions of 1863 caused a general exodus of Maori pupils, from which many industrial, Native and common schools never recovered. Thirdly, management by boards of trustees was haphazard, lacked continuity and, even when a sense of purpose was evident, failed to recognise the inalienable tenure of the land grants. Little distinction was made between grant land and other Church property. Moreover, the managers of the schools were often responsible for more than one institution, and consolidations were made when their viability wavered. Fourthly, these industrial schools were not the only places concerned to rescue children; others, some of the same denomination, were doing it more

successfully. Fifthly, racism amongst the Pakeha settlers disinclined them to allow their offspring to mix with Maori children, even in charitable and religious schools. Sixthly, and most critical to the schools' continued operation, the government itself, by the repeal of the *Education Act, 1857*, had curtailed the capitation subsidies formerly payable. The Auckland Provincial relieving officer for charitable aid made it clear in his evidence before the Commission that his council's sympathies lay with the non-endowed voluntary institutions who received £10 p.a. per child, against £5 p.a. in the endowed institutions. His refusal to recommend an increase for Three Kings—or the Catholic St Mary's, North Shore— incensed the Wesleyan Mission Trustees, who attempted to force the Provincial Council's hand by giving notice that unless the children in their charge were removed by the Provincial Council they would be sent to the Provincial Superintendent's office. Shortly afterwards, all fifteen children were removed to the Parnell Orphan Home, and Three Kings was closed.

The Industrial School Ideal. While these experiments were in progress, the terms *industrial school* and *industrial training* became commonplace in educational and charitable parlance. It seems clear that both were used in the sense of *vocational training*, to prepare children with work and life-skills appropriate to their station. In the grand plan of Grey, and his kind, when industrial training was carried out in a religious atmosphere, moral virtue and standards would also be inculcated, providing obedient members of a stable, ordered society. In the long term, the original conditions for industrial training in special schools became obsolete with the provisions of the *Education Act, 1877.*

In the short term, the church-run boarding schools which were charged with industrial training soon took on an elitist character in the fashion of the English public schools. One in particular, the Wanganui Industrial School, formed aspirations to become the *Rugby of the South Seas*, and in so doing incensed the ordinary people of Wanganui township who claimed in a petition to Parliament that an educational resource was being misappropriated (AJHR, 1875, I.5). The petition lay unresolved on the Parliamentary table for 77 years.

That incident was the basis of an significant case study on the differential treatment of children by class and race and, to preserve chronological symmetry, it is included in Chapter V11.

Another practice appeared, more common than the *embourgeoisement* of endowed industrial schools, which was also to distort the original ideal envisioned by Grey. Following on the proliferation of church and Native schools which by trust deed or general expectation had been required to undertake industrial training, the term *industrial school* came to be applied indiscriminately to any boarding institution for dependent or delinquent children. A subtle shift in emphasis, from the normal to the abnormal, paralleled the move of both churches and the state into rescue work with children. These broader developments are now examined in turn.

Church Rescue Work

The apparent indifference shown by the Maori missions to Pakeha immigrant needs was a gap quickly filled by the *settler churches.* In the main centres of Auckland, Wellington and Christchurch, social service work with the poor and their children was begun within a decade of settlement. The masculine, hard-drinking, rough-and-ready society of the seaports was an affront to the gentility aspired to by the family settlers. Men far out numbered women and prostitution was common. "There were taverns and dens of iniquity where dice games, poker and all manner of vice were practised with impunity" (Morgan,1966: 13). In such a social climate, to save fallen Christians from their own depravity was missionary work of the most rewarding kind. Children and young women were the principal clients, and the main method of reform was to put them into institutions. Alongside similar developments elsewhere, a Church of England Social Purity Society was formed in Christchurch in 1864. Its aim was to rescue homeless and fallen women who were graded into three classes: those not yet "fallen", those fallen but capable of rehabilitation, and those beyond redemption (Morgan, 1966: 12-4). A Female Refuge was opened in

that year and, after several shifts to larger premises, became in 1874 a non-sectarian institution subsidised by the Canterbury Provincial Council. In the case of female offenders, close liaison was maintained with the courts and the Addington Gaol.

Early orphanages. In Auckland and Christchurch of the 1850s the pattern was for a clergyman to take homeless children into his own home and, as numbers increased, to work with a mission or guild for their care in a separate dwelling under a housemother. Finding foster care and wet-nurses for very young infants was also part of that work. The Symonds Street Cottage Home, Auckland, was begun in this way in 1860, by the Church of England. In Christchurch, the first Synod of the Canterbury Anglican Diocese, August,1859, set up a commission to study child rescue. By the time the second Synod was convened in 1861, a curate was already giving shelter to a group of children who were the nucleus of the Christchurch Orphan Asylum formed in early 1862 and moved to a purpose-built orphanage in 1864 (Morgan, 1966).

On the whole, the term *orphanage* was a misnomer. Except at certain periods, such as epidemics and wars, few of the children admitted to these institutions had both parents dead. More commonly, the precipitating cause was an absent father and a mother who could no longer maintain the family home. Religious bodies were first in the field and were strongly represented in the ostensibly non-sectarian institutions such as the Parnell Orphan Home. Both church and voluntary agency orphanages received capital subsidies and capitation payments from Provincial Councils, usually through their charitable aid committees and relieving officers (Chilton, 1968: 44-60; Tennant, 1981). Also discernible was a pattern for sole regional institutions begun by one denomination to be secularised in due course. The transitional stages were, in either sequence, a declaration of non-denominationalism—that is, soliciting children of any religious faith—and successful appeals for financial assistance from provincial governments. The final stage was the withdrawal of the sponsoring body and transfer of control to the provincial council or a secular society. This is not to say that the churches retreated from rescue work. Rather,

it was a "re-grouping" in which their resources could be applied to best effect. These practices allowed rescue workers to divert difficult children into state-supported institutions and biddable, younger children into church institutions. This was a foreshadowing of the idea of *differential treatment*, by the use of other forms of substitute care.

State Industrial Schools

The industrial school ideal applied by sectarian and voluntary agencies under the Grey doctrine, was taken up by the state long before the short comings of that system became apparent. It was first introduced, not as education for life skills, but as a means of governing the children of the poor and the unruly. This sequence needs to be emphasised in order to understand the intent of the state, in this case provincial governments, to cease merely underwriting interventions provided by non-state agencies in health, education and charity, and to move into these areas as proprietor. It is important also to rebut the misleading impression given by Koopman-Boyden and Scott (1983: 102) that industrial schools made their first appearance under state auspices. It would be more true to say that a new form of industrial school was introduced once the state adopted that model for incarcerating children.

The Otago Experience. The Province of Otago gave the lead in introducing state residential schools, when rapid and dramatic social changes followed the discovery of goldfields in 1861. The population of that province rose from 12,600 to 60,000. Its capital, Dunedin, ". . . became the largest town in the country, while to the horror of the 'Old Identity', saloons, billiard rooms, gambling dens and dance halls sprang up to attract the gold of the 'New Iniquity' (Sinclair,1959: 104). Leaving their wives and children in the city, a number of male breadwinners went off the goldfields, many never to be seen again. Combined with a depressed urban economy, these circumstances created in Dunedin such a regiment of fragmented and destitute families that the governors of charitable organizations felt both overwhelmed and resentful.

The nature and extent of the problem of destitute and neglected children, was reported to the Provincial Council's Education Board in 1866 by its Secretary-Inspector, John Hislop (OPCVP, Session XXII, 1866). In essence, Hislop identified three issues confronting the Board. The first was the growing number of children for whom schools were claiming from the Board the allowance of ten shillings per annum, introduced the previous year in the *Education Ordinance Amendment*, as an inducement to the education of the poor. The second issue was the moral contamination suffered by children of the "disreputable" poor, and the consequences of allowing them in turn to associate with children of respectable families. The third issue was the outcome of a recent police survey, *Children growing up in Habits of Vagrancy in and around Dunedin, and receiving no Education owing to the Inability or Indisposition of their Parents to Provide the same*, a Return furnished by the Commissioner of Police, which showed that some fifty-five children attended no school, forty-two of whom were said to have "profligate parents". Police estimated that more than twenty vagrant children had escaped their survey. Added to the rolls of the Free schools, these abstainers represented thirty per cent of all poor children. Hislop made a case for them to be "rescued" from their parents and segregated from other children, as follows:

> It has, therefore, become a question of the greatest urgency and importance that steps are taken on behalf of these unfortunates. The Free schools do not all meet their case, for no real good can be expected from their attendance at an ordinary Day School, however efficiently conducted, as long as they are exposed to the counteracting and degrading influences of wicked and criminal home or street example or associations. In fact the presence of these children in our ordinary Day Schools is greatly to be deprecated, as it cannot fail to exert a pernicious influence on the children of honest and respectable parents; and unless means are taken to separate them entirely from their profligate relatives, and to renovate and raise their moral nature, their mere instruction and progress in secular learning may be productive of evil rather than of good to the community in after years.
>
> This question has been of late anxiously pondered and discussed by the Provincial Treasurer, the Commissioner of Police, and myself; and there is reason to believe that the plan suggested by Mr. Branigan [Commisssioner of Police] is most likely to meet the emergency. That gentleman recommends that a portion of the Hospital reserve at the Octagon, adjoining the proposed Police Establishment there, should be

> set apart temporarily as an Industrial School for the proper education and training of vagrant and neglected children, under entire seclusion from their profligate relatives and other adverse influences; and that an Act of the Legislature should be forthwith secured, empowering the Government to take all necessary steps for fully and efficiently carrying out this object (OPCVP, Session XXII,1866).

Lest he had not roused the Board to moral outrage, Hislop went on to give from the Commissioner's report case studies of several families ". . . to reveal in all its hideousness and loathsomeness the evil with which it is necessary to grapple". Filth, laziness, drunkenness and prostitution were the typical attributes cited. Legislation was "secured", in the form discussed below, and New Zealand's first state-controlled industrial school, in the Dunedin suburb of Caversham, was opened. Twelve years later, in a report to the Secretary for Education, Wellington, to whom control had passed in 1880, the Master of the school repeated these justifications for its establishment in 1869.

> At that time there was assembled in Dunedin a class of people from the neighbouring colonies, many of whom were leading an irregular and dissipated life, whose children were likely to become pests to society. The late Mr. Branigan, then Commissioner of Police, Mr. Macandrew, then Superintendent of the Province, Sir Julius Vogel, then Provincial Treasurer, and Mr. Hislop, then Secretary to the Education Board, saw that it was absolutely necessary to pass some measure whereby they might provide a home for those children, whose parents were leading such lives that it became dangerous to the future well-being of their children and society for the children to remain under their control.
>
> On referring to the record book I find that, during the first year after the establishment of the institution, nearly the whole of the boys and girls committed were taken from the brothels, and their parents described by the police as being of the lowest class. This institution, therefore, was established for the purpose of rescuing young boys and girls from the paths of vice and infamy, and providing them with a training as would fit them to become useful members of society (AJHR, E.6A, 1881: 19-20).

Other schools. Burnham in Canterbury was opened in 1873 and, along with Caversham, almost immediately passed to Justice Department control with the formation of the General Government in 1876. Auckland seemed to be plentifully supplied with denominational homes, and the provincial Howe Street Orphanage, an industrial school under Department of Education control from

1881, was used as a kind of industrial school in the interval (Beck, 1954: 87). While only some provinces, especially the southernmost, maintained industrial schools, children were accepted from others provided their home province met the costs.

These state industrial schools were the core of the nascent child welfare system. They were created as refuges for the morally impugned and to segregate them from decent children. Keeping in mind the conditions reported for the Irish industrial schools, the growth and decay of the schools is narrated in the next chapter.

CONCLUSION

Annexation of Aotearoa by the British Crown spelt the disruption of a way of life for the tangata whenua and a period of pragmatic experimentation to build a new society for the manuhiri, the Pakeha colonists. Children of both races, from infancy to young adulthood, shared in the risks and rewards of that change. Not only were children the largest age-stratum amongst the settlers, but also it was to them that the new society belonged. By 1880, persons born in New Zealand were beginning to outnumber residents born elsewhere; the *colonials* became a majority over the *colonists.*

Life was full of promise for Pakeha children who were part of integrated families, brought even closer together by the new and sometimes hostile environment (Petersen, 1956; Arnold,1981). Observers remarked on the confidence of children and the comradely spirit which was evident between generations, markedly different from the social relations of the Old World. In contrast, those who were excluded from intact family networks and, therefore, likely to become a burden upon the community were viewed with suspicion and hostility. The indifferent reception accorded the two shiploads of Parkhurst reformatory boys sent to Auckland for resettlement in 1842 and 1843, set a tone that was to develop towards dependent children in general. While the settings

and the practices showed adaptation to local conditions, the values which informed those practices were steadfastly British, derived from the orthodoxy of the gentry rather than the bourgeoisie (Gibbons,1981: 305).

The socialization of children lay at the heart of two related and contentious patterns of social structure for which political accommodation had to be made between competing interests during this formative period. Firstly, there was the question of education and charity systems which would maintain harmonious, structured inequalities. Secondly, there was the issue of the relationship between church and state. The belief of Governor Grey and his supporters, was that the state should support the churches to deliver both a religious education and organised charity. To that end, the state gave land grants and cash subsidies for religious, educational and charitable purposes to all the active religious denominations during the Crown Colony period. The Church of England, the Wesleyan Methodist and the Roman Catholic Churches, as the largest denominations, were the principal beneficaries. A retreat from that policy was begun in 1857 when the authority for state capitation subsidies was repealed.

The English model of the residential industrial school, which combined religious, educational and charitable aims, was adopted as governmental policy for the children of the poor and for Native schools. The intent was to provide a basic formal education, vocational skills and a disciplined Christian morality. The children of the bourgeoisie were to be educated in church-sponsored grammar schools. For many reasons, the grant-aided industrial schools were not a success and generally ceased to function as educational institutions after the North Island Maori-Pakeha armed conflicts of 1863. At the same time, rescue work with children and young women had been solely the preserve of the main churches and religious-oriented voluntary organisations. Foster care for foundlings, nursery homes and orphanages proliferated under the guidance of the clergy, and became large-scale enterprises in such a small population.

The inability of the churches to sustain that charitable work, combined with

the reluctance of the provinicial councils to increase financial support to sectarian institutions, resulted in a transfer of some functions to the state authorities and the emergence of a dual system. A surge in demand for outdoor charitable relief and, in Otago, a cry for the control of pauper children, outstripped the capacity of provincial charitable-aid committees. The *Neglected and Criminal Children's Act, 1867,* which authorised the opening in Dunedin two years later of the first provincial industrial school, created a reformatory system. From then on, the term *industrial school* had a very different meaning from what Grey had envisaged.

The prime significance of the *Neglected and Criminal Children's Act, 1867,* was the power which it gave to the court to override the hitherto inalienable right of fathers, or their widows, to the custody and guardianship of their children. Previous legislative attempts to re-assign children to new masters or mistresses, such as the *Destitute Persons Act, 1846*, and the *Master and Apprentice Act, 1865*, had been quite ineffectual. A further consequence was that it validated the role of church institutions through the practice of making children committed to those places the financial responsibility of the provincial governments. The term *industrial school* came to be loosely applied to any form of residential institution caring for children over the age of five. Of the twelve places officially recognised as industrial schools in 1879, four were controlled by the Justice Department, two by local authorities, five by religious bodies and one was privately run. While the broader ambitions of Grey's industrial school ideal became obsolete with the *Education Act, 1877*, its residue remained as an instrument for the control of dependent and difficult children.

All children were affected by the battle which was fought over the issue of denominational education, first at the provincial level, especially in Nelson and Auckland, and finally resolved as a decision of the new General Parliament formed on the abolition of provincial government in 1876. The *Education Act, 1877*, made schooling free, secular and compulsory for children between the ages of seven and thirteen years. The compulsory element must be recognised

as a further infringement on the rights of parents and children. Moreover, in removing children from the labour pool it also effectively changed the nature of the family as the unit of economic production. Most important, it created a new social category, that of *state school children*, the control and socialization of which was henceforth firmly in the hands of the state.

In other areas too, a good deal of state activity was directly, or indirectly, concerned with governing children. The registration of births was taken over from the churches by the state, family law was amended to give recognition to women-alone, to fairer custody provisions and to under-age marriages, and attention was given to employment conditions for children and young persons. The state was cautiously feeling its way in developing policies for children. This was mainly a pragmatic, reactive process, caught between the desire to leave welfare matters to the churches and the need to develop an infrastructure for the new colony. As yet, however, the state had little interest in the individual child except for the orphaned or troublemakers. The small inroads made on the rights of parents to exclusive possession did not interfere with their right to buy, sell or trade their children.

If for that reason alone, this period must be characterised as the time when children were property—or chattels—with no specific claims to rights. Obviously, the pattern of relationships showed children had certain implicit rights, such as the right to belong, to care and concern by adults and, from 1877, the explicit right to education. Country children also had a great deal of freedom of action, so that one can say they had certain implicit rights of liberty. Compared to enfranchised, adult males however, children had no identity separate from their parents and no explicit civil rights on which to stand. The extent of that void is thrown most strongly into relief by the events which were to follow from 1880 onwards.

CHAPTER V

FROM CHATTEL TO PROTECTED PERSON, 1880—1913

The nature of the relationship between children, their parents and the state began to show a different shape towards the end of the century. That change is expressed here as the idea of the child as a *protected person*, and this chapter shows how those relations changed during the period from 1880 to 1913. Whereas the foundations of policy were laid up to 1880, the infrastructure was constructed over the next three decades. In particular, the state sponsored child welfare legislation and new practices in the areas of health, special education, employment and welfare at a rate and to a degree not seen before or since. Concurrent with the change from provincial to central government was a change from the previous contracting-out of provisions governing children. The state assumed proprietorship of many of these provisions and adopted an inspectorial and regulatory role in regard to non-state agencies serving children. Changes of practice were often the result of a Parliamentary commission of enquiry, the number and frequency of which also gave this period a unique character. By the end of the period under review, that protectionist role was being justified as in the interests of societal well-being through the preservation of its children as human resources or social capital.

THE SOCIAL CONTEXT

New Zealand society in the 1880s has been described as being in a "consolidation phase" (Graham, 1981: 113). It seems most apt that Graham opened her account of this period with an encounter in 1888 between Sir George Grey and a resident of the Parnell Orphan Home, James Williamson.

To her, the symbolism of the meeting between the elder statesman and the barefoot orphan epitomised

> . . . a new phase in the a new phase in the country's development. The 1880's revealed some distressing shortcomings and inequalities in colonial society but that decade also marked the beginning of a foundation era during which New Zealand's European population had grown, mostly through immigration, from 5,000 in 1841 to well over 600,000 in 1891. The 1886 census revealed that nearly 52 per cent of the population had been born in the colony. The future of the country would lie increasingly in the hands of the native-born, of whom James Williamson was in no way an untypical example (Graham, 1981: 112).

The economic depression of the 1880s was the event to destroy finally the myth of unlimited opportunity and egalitarianism, and social differences became more marked rather than diminishing. Although the society may not have followed the same modishness of upper class Europe, social divisions were strong, broken down only by the imperatives of enforced association and mutual co-operation. Colonial society gave a certain licence to variations in conventional relations between rich and poor which was to become the basis for an openly stratified society, yet noted for the absence of subservience. Until the 1890's, leadership and political control was firmly in the hands of the landed gentry, the class with the education, the freedom and the motivation to pursue its own political interests. A backlash against privilege in general, and against exploitation by both the farming gentry and the urban capitalist in particular, produced a new type of politician eager to realise the opportunities for social democracy promised by the egalitarian mood. The break from the British class system was hastened by the speed and degree to which the Liberal-dominated Parliament pushed through democratic reforms.

New Zealand began to lose its frontier character. Family and household size began to shrink at the time of a distinct drift to the cities (Graham, 1981: 135). There were seven censuses between 1881 and 1911 inclusive, and the numbers for adults and minors for those periods are shown in Table 9. From those figures, it can be seen that in the period under review, the population of New Zealand shifted from being predominantly young, i.e. under twenty-one

years, to being predominantly mature. In 1881, 52.84% of the population was under twenty-one, compared with 1911 when 41.79% were in that age group.

A new moral zeal was abroad, evidenced by the growth of the temperance movement and a proliferation of religious and secular welfare organizations to mobilise action in areas left unfulfilled by the family. The twin cults of *domesticity* and *true womanhood* are said to have given this period its moral character.

> In this situation, 'God's Police', to take Anne Summers' expressive phrase, marched to centre stage. . . . God's Police consisted of a diffuse grouping of women and men who elaborated an ideal of sexual purity and temperance, together with a cult of domesticity, and imposed these upon New Zealand society. . . . Prohibitionists, feminists, people avid to prevent cruelty to women, children and animals, educationalists and the evangelists of modern science, spelt out the terms of the new domesticity. Mother became a cult figure, her temple the Home. She became by definition a moral redemptress, a figure of purity and chaste love, the home a place of refuge and moral elevation. . . . [the cults] initially appealed most to the urban upper-middle class but were soon accepted by the middle classes generally and by many in the working classes. . . . By polarising gender roles and clearly demarcating separate spheres the new cults promised to order and rationalise social relations between the sexes in the growing cities. For urban women especially the new cults also offered a sense of importance and dignity that had been lost when the pioneering period ended (Olssen and Levesque, 1978: 6-7).

The child-rescue movement reached its peak, for the surveillance of children's physical and moral environments was still in the hands of non-state agencies, of which the Society for the Protection of Women and Children was a leading example (Tennant, 1976: 24-37). Moral decay became a fear of the social purity reformers and in 1892 they petitioned Parliament to have curfews imposed on young people and,

> . . . although their cause was knocked back at first it was taken up by Seddon in 1896 and put before Parliament. Seddon, supported by a municipal conference and later two select committees, claimed that "Juvenile Depravity" was spreading and that a curfew was necessary to protect the morality of the young. But Parliament was sceptical and although repeatedly invited to consider a curfew denounced the

> proposals as "faddish legislation" and an "extraordinary irresponsible" attack on civil liberties. Small groups of "hysterical women" and "fanatical morbid people", it was claimed, were attempting "senseless overlegislation" because they feared " the freedom that prevails amongst New Zealanders" (Eldred-Grigg, 1984: 140).

Children were directly affected by the widespread poverty of the times. As well as the physical debits and ill-health resulting from reduced household incomes, poverty also led to an increase in the numbers of children committed to state care and impeded the ability of children to utilise fully access to education (Graham, 1981: 136). The first significant wave of fatherless children appeared as a result of a volunteer contingent of soldiers going to the South African Boer War. As this chapter goes on to show, the socialization of children was to take on a distinctive indigenous character in this period. For the pre-schooler, unique forms of infant-rearing with far-reaching effects were introduced by Truby King and, once at school, the child was now indoctrinated with a patriotic fervour which began to put country slightly ahead of Empire (McGeorge, 1986).

Children's Legal Capacity to 1913

Children remained very much the possession of the father and the responsibility of the family during this period. With only minor changes, the law on the capacity of children and young persons has to the present day remained much the same as provisions laid down during the period 1880 to 1913. The legal age of majority was twenty-one years, and younger people were generally regarded as *infants at law*, with the exceptions noted below.

The basic legal rights and obligations of children underwent a rationalisation when related legislation was brought together in the consolidated *Infants Act, 1908.* But legal prohibitions, penalties and entitlements for children occurred across a diverse range of legislation, most creating their own age definition of children and creating a confusing picture of the real capacity of young people when compared with the legal requirements.

Dependency. The *Destitute Persons Act* was re-enacted in 1910, continuing that practice in which parents were financially responsible for the support of indigent offspring, and vice versa, regardless of age. The degree of filiation was extended to cover even more relatives (Riddell and Holmes, 1913: 5). That development had been foreshadowed in the *Industrial Schools Act, 1882*, when the definition of *parent* was broadened to include not only parents, stepparents, adoptive parents, and grandparents, but also any brother of an inmate, "if of full age". Maintenance orders could be made against those relations towards the cost of keeping children in care. Including brothers as liable relatives endorsed the male breadwinner principle. Claims for adult support, with the aim of protecting the taxpayer against the costs of institutional care for the aged, the infirm, the indigent and the sick, were limited to the necessities of life. Spouses, third parties, or the children themselves had the right to sue for support, a provision extended to illegimate children through paternity orders. Maintenance orders could be obtained for specific sums and specific periods during the dependency of a child (Riddell and Holmes, 1913).

Guardianship and custody. The principle that common law conferred *prime* rights of custody of children to the father, and that he alone could appoint guardians, was upheld by the *Infants Guardianship and Contracts Act, 1887*, and reaffirmed in the *Infants Act,1908*. In New Zealand, the principle was never absolute, for courts had and used the power to allocate custody to others, although guardianship remained with the father. The 1887 Act made some further inroads into the rights of fathers by making provision for mothers to sue for custody (if necessary, as *femme sole*, a status gained first in 1860). Petitions for separation or divorce could request custody on the grounds of the misconduct of the spouse, and s. 8 prohibited guardianship or custody returning to any parent previously declared unfit.

Parental or guardianship consent was required for anyone under twenty-one to marry, provided that, where consent was withheld, the minor could apply to the court for consent to be dispensed with (*Marriage Act, 1908*, s. 24).

Illegitimate children. Although the state moved to protect illegitimate children through controls over their foster care, as described in this chapter, both the state and some churches continued to discriminate against children born out of wedlock. Pensions for widows introduced in 1911 specifically excluded any of their dependent illegitimate children (SNZ, 1911: 16, s. 5). The General Committee of the Presbyterian Social Service Association, Christchurch, resolved in 1913 that, ". . . we hold by the general principle that the Homes belonging to the Church are not for such children, but we reserve to ourselves the right to make exceptions when the circumstances of any such justify" (Wilson, 1980: 4).

Contracts and property. Commercial protection was extended to children in the *Infants Act,1908*, which dispelled some of the confusion hitherto existing on the capacity of those under twenty-one to be bound to contracts entered into. The Act provided that all contracts, except those for the supply of *necessaries* (principally food, clothing and shelter), were voidable. So, while anyone might enter into a contract with an infant, it had no standing at law and the infant could not be sued for its enforcement. Similarly, ratification by a person of full age of a contract or debt negotiated during infancy was not enforceable. Infants could make wills (*Infants Act,1908*, s.14), marriage settlements (*Property Law Act,1908*, s.99), hold land as if they were of full age (*Fencing Act,1908*, s.46), and conduct their own savings-bank transactions (*Savings-banks Act,1908*, s.27).

Other capacities. In the courts, children could sue and be sued in the Supreme Court through a guardian *ad litem* (*Judicature Act, 1908*, s.17), and were competent to give evidence in any proceedings. Oaths were not required to be taken by children under twelve years (*Evidence Act, 1908*, s.53). Limitations on the insuring of infant life reduced the opportunity for making children the victims of criminal fraud (*Life Insurance Act,1908*, s.75). Other issues of capacity, such as status in the workplace and the age of criminal responsibility, are raised in this chapter.

NEW PATTERNS OF PROTECTION AND SUBSTITUTE CARE

Throughout the western world, children's advocates make compelling points about rights by drawing attention to the fact that laws governing the welfare of animals, have preceded those forbidding cruelty to children (Freeman, 1983: 105). New Zealand was no exception.[1] Nevertheless, from 1880 to 1913, children were the object of a great number of statutes. Laws were enacted covering adoption, child protection, labour conditions, child health, and fostering. As in the earlier period, the actual statutes tended, by today's standards, to be lengthy and highly specific.

Until 1881, the state was little interested in the career of the individual child, unless it committed a criminal offence, or unless its parents failed to provide for it. The options open to the court, before whom such children were brought for disposition, were severely limited. The Court could commit the child to the care of the manager of an industrial school or make a *fit person* order, together in each option with a maintenance order against one or either parent. The child could be brought again before the court in further actions, or maintenance orders could be varied if the circumstances of the child or the payor changed. The police and the relieving officer of the local charitable aid board could give evidence about the offence and about the proposed disposition of the child, but neither of these agencies had any continuing responsibility either to the court or to the child and its family. The new determinations of this period, both legislative and administrative, were to offer a wider array of dispositions of children, impose regulatory mechanisms on the agencies involved, and create the beginning of a welfare surveillance system covering all children. And, for the first time, children were afforded some legal protection from abuse by their parents or caregivers. These developments in

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[1] An added irony is found in the *Protection of Animals Act, 1867*, s.35, which required that any convicted person under fifteen years of age who could not pay his or her fine was to be "privately whipped" in place of being sent to prison.

adoption, foster care, and child protection, which began as discrete legislation, were finally consolidated in the umbrella *Infants Act, 1908*. That progression is now discussed by policy area.

Adoption

New Zealand's first *Adoption Act* was passed in 1881. To put this in context, and because adoption is a continuing theme throughout this enquiry, some orienting comments seem warranted. Special significance can be attached to the advent of this Act, the first in the British Empire, and forty-five years before Britain itself was to make such provisions. As the object of the Act was "... to encourage people to take neglected and deprived children into their care, by giving legal backing to the relationship" (Webb,1979: 1), it can be assumed that unwanted children constituted a sufficiently serious problem to carry public support for parliamentary action. At the same time, Griffith (1981: 1) pointed out that its passage through the Houses of Parliament was as a private member's bill sponsored by the Hon. George Marsden Waterhouse (1824-1906), one-time Premier of New Zealand. Allowing for that idiosyncratic origin, it captured the interest of a Parliament ready to experiment with child adoption, already in operation as a humanitarian device in some states of the USA (NZPD, 1881, XXXIX: 7).

Forms of adoption, particularly what we would today call unconditional fostering, had, of course, been practised before the law gave this new incentive. What is of interest in those *de facto* adoptions, and in foster care of those times, is that the greatest activity occurred amongst the working class and the poor. It was they who produced the greatest number of illegitimate children and most often expected to wet nurse or care for foundlings. The reassignment of children had been a feature of Poor Law provision, especially the placing out of children to be apprentices, thereby establishing a fresh identity and a place in the social order for the unwanted child (Pinchbeck and Hewitt, 1973: 582-90).

The first Act. The *Adoption of Children Act,1881*, was relatively short and

straight forward. It allowed any married person, with the consent of his or her spouse, who was at least eighteen years older than the child, to apply in writing for an adoption order from a district court. Only children under twelve years of age could be adopted. The Act stated in s.3 that the District Judge could

> . . . with the consent in writing of the parents of such child, or such one of them as shall be living at the date of such application, or, if both parents be dead, then of its legal guardian, or, if one of such parents has deserted and ceased to care for and maintain such child, then with the consent of the other of such parents, and in the case of a deserted child, without such consent, and on being satisfied that the applicant is of sufficient ability to bring up the child, and that the interests of such child will be promoted by the adoption, make an order authorizing such person making the application to adopt such child (SNZ, 1881: 9).

Orders could be reversed by the same court within three months. Adopted children were to keep their own proper name in addition to the name of the adopters. The Act made specific limitations on the inheritance from the adopters of any right, title or interest in property. In brief, the adopting parents could make testamentary provision for adopted children, but not at the expense of any of their children of "lawful wedlock". At the same time, the right of adopted children to claim against the estate of their natural parents was preserved.

As for married applicants, same-sex applicants also had to be eighteen years older than the child, but in the case of applicants of the opposite sex, forty years older. Even so, the potential sexual exploitation of children was raised in debate at the Legislative Council. One speaker, the Hon Mr Scotland, still thought that "Foolish old men might, perhaps, adopt very pretty young girls, and foolish old women might adopt very nice young boys, with ideas of matrimony at a future time" (NZPD, 1881, XXXIX: 7).

Regulations setting-out the rules of procedure were gazetted in January, 1882. The only curious feature of this Act was the provision in s.8, allowing adoption by a body corporate.

Upon the application of the manager for the time being of any benevolent or other institution established in connection with any religious denomination, and not maintained by Government subsidy, who is desirous of adopting any deserted child in connection with such institution, the District Judge of the district wherein such institution is situated, on being satisfied-

(1.)That such child is deserted, and of the same religious denomination as that of the institution whose manage makes such application;

and

(2.)That such institution is properly conducted, and is capable of bringing up such child, may make an order authorizing the manager for the time being to adopt such child in accordance with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, real or personal, or otherwise howsoever, of such manager or institution (SNZ, 1881: 9).

The provision was clearly intended to save taxpayers' money by diverting children from state to church-sponsored social service care. The embargo on those places subsidised by government was to forestall wholesale recruitment of children to inflate such subsidies. The right was used from time to time by some church institutions, to whom the age and sex prohibitions did not apply. Griffith (1981: A4) records the case of the Superintendent of the Presbyterian Social Service Association, Otago, a single man, who in 1909 adopted twenty-one children in the PSSA children's home, Dunedin.[2] Corporate adoption was discontinued when this provision was repealed by the *Child Welfare Act, 1925*, and different powers given to managers of children's homes.

Official police surveillance of adopted children under the age of three years was introduced as part of the foster home registration and inspection scheme set up under the *Infant Life Protection Act, 1893*.

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2 Although a PSSA historian did not corroborate the Griffith report, he did identify the Rev. E. A. Axelsen as PSSA Superintendent and orphanage manager for the years 1906 to 1922 (Stewart, 1958). A later history referred obliquely to the fact that Axelsen went to prison for sexual offences against children in his care (Rae, 1981: 47). This throws light on the reason why John A. Lee felt emboldened enough to give the name *Axeldeen* to the pederast chaplain in his semi-autobiographical novel *Children of the poor* (Lee, 1934: 233-6).

The second Act, 1895. The1881 Act was repealed and re-enacted in 1895 with slight changes and few additions. Of greatest importance, the new Act provided for illegitimate children to have legitimate status upon adoption. It raised the age limit from twelve to fifteen years, with the requirement that those children over twelve must consent to the order. It also removed the time limit within which an order could be reversed or discharged. With only the occasional amendment, these provisions were to remain the core of adoption law until 1955. An amendment was made in 1906, which for the first time specifically forbade the acceptance of any payment or premium in consideration of an adoption, except with the consent of the magistrate. Also in that year, s.2 of the *Statute Law Amendment Act* spelt out that forbidden degrees of relationship under the *Marriage Act* applied to adoptees and their relatives (SNZ, 1906: 58). Parental rights in adoption were varied by s.21, *Infant Life Protection Act,1907*, which allowed the court to dispense with the consent of the parent or guardian, where the court considered them unfit to have custody. An appeal could be lodged within one month. Adoption law was incorporated as Part III of *The Infants Act,1908*.

Maori adoptions. The value placed on Maori children as members of the whanau and the hapu resulted in a divergence between Maori and Pakeha practices in child adoption. As well as the functional and symbolic elements of child exchange in Maori society, customary adoptions, as they became known, differed from Pakeha practice in two important ways. Firstly, there was no reason for them to be secret. On the contrary, the way to establish an adoption by Maori custom was to make the exchange known amongst the community. After registration was introduced in 1901, the details of all Maori adoptions were published in the *New Zealand Gazette*. Knowledge of origins was considered imperative for children, all of whom would learn their whakapapa, and it was common for them to have contact with birth parents and siblings. Secondly, whereas most children offered for adoption by Pakeha parents were born ex-nuptially, customary Maori adoption involved children born in wedlock. Thus, the stigma of illegitimacy attached itself to the Pakeha practice of

adoption, reinforced by their way of talking about birth parents as "true" parents, and down grading the quality of the adoptive relationship (Report of the Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1987: Appendix, 18-20).

Customary Maori adoptions, recognised implicitly by the Westminster *New Zealand Constitution Act, 1852*, were unfettered by governmental requirements until 1901, and might have remained so had not the entitlement to communal land become bureaucratised. Once ownership was established in the Pakeha mode, land could be sold and alienated. Registration of those adoptions by the Maori Land Court was introduced in that year to ensure the right of prior succession for the children. The Judge, in an inquiry held in open court, had only to be satisfied that the adoption was a bona fide customary adoption, and the registration procedure applied solely to land claims and not to the adoption itself. A period of grace was given to 1910, after which no claims were recognised unless supported by registration. To prevent further alienation of land, the *Maori Land Act, 1909*, expressly forbade the adoption of Pakeha children by Maori after 1910, a provision re-enacted several times and remaining in force until 1955 (A. J. McDonald, 1978).

The protectionist attitude of the times comes through in facets of these early adoption laws. Of special interest is the requirement in the 1881 Act ". . . that the interests of such child will be promoted by the adoption". The idea of "interests" seems to have included protecting the child against sexual or labour exploitation and ensuring continuing financial support; emotional or psychological interests were to figure much later. The rights of parents, initially inalienable except for insane or deserting parents, were modified after twenty-five years' operation of adoption law, allowing parental consent to be dispensed with when this was in the interests of the child. A further protection was accorded from 1895 by the right of a child over the age of twelve years to be consulted and to have power of veto. As Webb points out, the rationale behind this change was requested by parliamentary question (1979: 2), but the Attorney-General's answer, if any, is not recorded. One can speculate that it

was recognition that children over twelve could assist the court to determine whether an order would be in their interests. The parallel with apprenticeship law would lead to the assumption that young persons of working age should not be unwillingly bound to a master.

Adoptions remained at a comparatively low frequency during this period. Orders never exceeded one per cent of all live births. One order was made in the three-month statistical period after the Act became operative at the end of September, 1881. The following year there were thirty orders, the rate climbing slowly thereafter. For the first ten-year period to the end of 1890, ex-nuptial births accounted for 2.50% of all live births, and the 385 adoption orders made comprised less than ten per cent of that figure at 0.20% of all live births. The illegitimacy rate climbed to over 4%, where it remained quite constant, but adoption orders doubled in the period 1891 to 1900 to .44% of live births, and for the period 1901 to 1910 almost doubled again to 0.77% (Griffith, 1981: A2).

Foster Care

Finding substitute carers for children was a major preoccupation for fragmented families, the clergy and charitable workers, from the time settlers left their homes in Europe. The problems increased in the new world, with its smaller, more thinly spread population (National Council of Women, 1975). In Maori society, there was an expectation that upon the death of a woman with a dependent family, a sister should step into the mothering role by marrying the widower. Kinship contingencies operated in Pakeha rural and bush communities also, as in similar societies world-wide, in efforts to keep the economic unit intact (OHMF). The choice facing families whose parenting roles were disrupted, was either to attempt to replace the missing parent, either from within the family or by inducting a stranger, or else to solve the dependency problem by breaking up the family unit and giving the children into the care of others. At that time, as today, the determining factor was their ability to meet the costs of either solution.

The urban, working-class, settler family had fewer options when either parent died, deserted or became incapacitated. The informal fostering arrangements negotiated by clergymen for families in distress led to the formation of church children's homes, but the care of young infants remained a haphazard business. Small-scale private nursery homes became established, receiving their residents directly from fee-paying relatives or from charitable aid boards meeting the costs for deserving cases who would otherwise qualify for a place in an industrial school or orphanage (AJHR, 1987, H.22: 32). The charitable aid departments of provincial governments called this *private care* (PCPC, Session XXXIV, 1870: Document 35). As parliamentary inquiries concluded, neither residential care for older children nor *baby farms*, as private infant nurseries became known, proved to be entirely satisfactory instruments (AJHR, 1881, E.6A).

During this period, 1880 to 1913, there were two major policy developments in the care of children by strangers. The first was official approval for boarding-out children from industrial schools as an alternative to residential care. The second development, some ten years later, was the licensing of foster homes caring for young children, through the *Infant Life Protection Acts*. These are discussed in turn.

Boarding-out. In 1880, the Inspector-General of Schools, William Habens, reported to his Minister the findings of a visit to Australia, where he studied the industrial schools and their boarding-out system. Extracts from that report, and from reports supplied to Habens by Australian officials, were presented to Parliament as supplementary papers the following year (AJHR, 1881: EA). The merits of the Australian pattern had clearly impressed Habens, not simply because of the cost savings but also for the chance it gave children to have a surrogate family life and to escape the brutalisation of institutions. He wrote that:

> Children who are boarded out associate naturally with other children in the homes and at school. They acquire habits of self-reliance that cannot be formed in the seclusion of an institution which is a kind of prison. They come to look upon their foster parents as their natural

> guardians, protectors, and counsellors, and the home becomes a starting point and a rallying point for them as they enter naturally into the ordinary relations of common every-day life. It is found that the homes in which they are placed are improved in their general tone by the influence of the lady-visitors, and that parents who are content to let the State maintain their children in schools become jealous of the influence of foster parents, and strive to become worthy to claim the right to care for their own offspring (AJHR, 1881: E.6:1)

Arguments of this kind put forward by Habens, were sufficient to persuade parliamentarians of the merits of boarding-out. The following year, the *Industrial School Act, 1882*, effective from the beginning of 1883, amended and consolidated existing legislation to include boarding-out. This was the first state-funded foster-care programme in New Zealand.

The operation of boarding-out. The Act provided, in s.55, that the Minister of Education could license any inmate of an industrial school

> . . . to reside with some person who shall be willing and qualified to receive, take charge of, and qualified to provide for, maintain, and educate such inmate, and so that either the person taking the inmate shall be paid for the maintenance and education of such inmate at a rate not exceeding ten shillings a week, or shall be entitled to the services of such inmate in lieu of pay, or shall pay wages for his services, and, generally, upon such terms and conditions in all respects as shall be prescribed by the regulations. . . . the Minister shall not make payment for the maintenance and education of any such inmate whose age exceeds twelve years, and that no such licence shall be of force after the inmate has attained the age of twenty-one years (SNZ, 1882: 25).

The Regulations, gazetted in January, 1883, comprised fifteen clauses that interpreted the Act and laid-down rules for *foster parents*—the term then adopted and used since. A copy of these regulations became the *licence* for the inmate once signed and dated by the foster parent below the tail-piece "I agree to observe these regulations". The Act named the six industrial schools from which children could be placed: the three state schools at Auckland (including, temporarily, Kohimarama), Burnham near Christchurch, and Caversham, Dunedin; Thames Orphanage, run by the local authority; and two

Catholic industrial schools, St Mary's, Auckland, and St Mary's, Nelson. Technically, it was not necessary for children to be admitted to an industrial school before being boarded out, but they had to meet the criteria for admission. Placement direct to a foster home was the common pattern for infants, whereas older children were not so easy to place "sight unseen" and were admitted for classification. Placement was in the hands of the industrial school manager but the Regulations, following the Australian pattern, provided for the appointment in the main centres of "Local Visitors", ". . . a lady whose name is registered in the office of the Education Department undertaking to maintain a regular supervision of some child or children boarded out". The role of these women, which existed for about twenty years, was a combination of guardian *ad litem* and volunteer social worker. Evidence in the National Archives about their work has been summarised by Kendrick:

> The 'Lady Visitors" wrote careful reports about the children they visited. From those that remain—and most, unfortunately have been destroyed—one gets an impression of concerned, caring women, sensitive to the likelihood of exploitation, especially as so many of the children were placed with struggling farmers who made excessive demands upon their own wives and children. Schoolteachers' interest was noted and any complaints they made about foster parents were investigated. There seems to have been a number of widows and wives of invalids or unemployed people among the foster parents, and they tended to look after several boarded out children—quite often four or five. It is impossible to tell whether these particular reports were exceptional. As most of the children were placed in the country, travel would have been difficult and settlement sparse; ill treatment might well have gone unnoticed (Kendrick, 1983: 9).

In each city, one of these women could be appointed *Official Correspondent.* That entailed keeping a list of children placed, liaison between the local visitors, and forwarding their monthly reports.

Times were hard in the 1880's, accounting for a rise in admissions to industrial schools as well as for the large number of applications from women to become foster parents. From a survey done of the 114 women applicants for 1883 in Otago, a third were widows. The husbands' occupational status for the

remainder was predominantly lower working class, with a few farmers and small businessmen (Zander,1983: 3-4). Supplementing the household income was an obvious reason for fostering. Board payments varied throughout the country. At Caversham in 1883 the going rate was eight shillings per week, later reduced to either six or seven shillings for children up to the age of nine. Infants under one year old attracted the highest rate at nine shillings per week. To translate these payments into purchasing power, Zander did a wages and commodities exercise in which she found that:

> The 1881 Census gives information about average wages and costs of certain commodities. These may be some guide to our understanding of what the board rate might have represented to the foster mothers. In Otago, farm labourers received twenty to thirty shillings a week, bricklayers twelve to fifteen shillings a day, shipwrights eleven shillings a day and general labourers six to eight shillings a day. A laundress might earn five shillings a day. In other parts of the country rates were lower, and by 1886 many wages had declined.
>
> In 1881, a four pound loaf of bread cost 5 1/2d to 8d, butter1/6 a pound, sugar 4 1/2d to 6d, and tea 2/6 to 3/0. Thus a board rate of eight shillings represented some sixteen four-pound loaves, or sixty-four pounds of bread. The 1983 rate for a five-year old ($29.15) would purchase forty-five 750 gram loaves, about seventy-two pounds of bread (Zander, 1983: 4). [3]

Licencing and apprenticeship. Boarding out was known as *licensing*, and payment was made only for those under twelve years of age. Under the 1882 Act, two avenues were open for the placement of industrial-school residents who were over twelve: they could be licensed to be fostered without payment, or they could be indentured as apprentices. Males over fourteen could be sent to sea as apprentices on any British or New Zealand registered ship. Anecdotal evidence suggests that exploitation by employers was always possible for this age group and a sense of grievance the likely outcome (Lee, 1967: 24-5).

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[3] Foster parents in 1883 had to meet all costs, whereas in 1983, the payment was for food and clothing only. Additional payments for extras were discretionary and limited only by the needs of the child.

Infant Life Protection. Despite the intent of the *Children's Protection Act,1890*, sensational disclosures of alleged *baby farm* murders highlighted the vunerability of children not yet of an age to speak up for themselves. That led to *An Act to make Better Provision for the Protection of Infant Life* (short title, *The Infant Life Protection Act, 1893*) which became effective from January,1894.

The background story to this Act took place in Southland Province, and is worth recording for the picture it reveals of the nursery-home and adoption enterprise, and the influence that scandalous events can have upon policy. A Scottish immigrant, Williamina (*Minnie*) Dean (1847-95), later known as *The Winton baby farmer*, moved with her second husband, Charles Dean, to a small holding *The Larches* at East Winton in 1886 or 1887, where she began fostering infants. Sensational publicity on the outcome of a coroner's court enquiry into the second death of a child in her care, of which she was adjudged blameless, revealed the powerlessness of the police in the absence of records about the movements of infants. It was Dean's decision to ignore the new law on keeping records that made her the first person to be punished by it.

> Minnie never kept written records of her transactions, a fact which weighed heavily against her at her trial. The baby that Minnie Dean was tried for murdering was not the only child to die at "The Larches". As early as 29 October 1889 May Irene Dean, a six-months-old baby, which the Deans had legally adopted, died of "convulsions after three days' illness". This was duly certified by the doctor who attended. Eighteen months later a second baby, Bertha Currie, died of "inflammation of the lungs". In this case the Coroner's Jury returned a verdict of death through natural causes, but "The Larches" received much unwelcome publicity in colonial and English newspapers. As a result Minnie enveloped her activities with even greater secrecy. Early in May 1895 the bodies of two babies and the skeleton of a third were discovered in Minnie's flower garden. She was arrested, tried on a charge of murdering one of these, found guilty and executed on 12 August 1895 . . . the first and only woman to be hanged in New Zealand (McLintock, 1966: 455).

It was not unusual for nursery homes to have six or more infants in residence. "Although, as a result of the trial, many legends have grown up about conditions at the baby farm, it must be remembered that this was a bona

fide business venture, and that, from the beginning, the people living in the district were aware of Minnie's activities" (McLintock,1966: 455). The children were accepted either for lump-sum premiums or on the promise of regular payments. Dean herself recorded some of these transactions in these statements written whilst awaiting execution:

> I had agreed to keep this child for three years at seven shillings per week to be paid monthly. I had got 28/- with her . . . it cost me £3.65 [*sic*] to bury her. . . . The second missing child, Henry. I brought him from Dunedin in February 1891. I received a premium of £25 with him. . . . I brought this boy [Willie Phelan] home from Dunedin on the 24th December 1890. He was then two years old. He was with me for two years and eight months not receiving any money for his keep. I sued and obtained judgment for £20 odd, but not receiving any more money, I returned the child to his mother on the 6th August 1893 . . . . The boy was with her ten days. I brought him home the second time on the 15th August 1893. Mr and Mrs Olsen [adoption applicants] met me by appointment at the office of Mr Fitchett, solicitor, who prepared the deed of adoption, but instead of £20 I received £16, there was £2-2-0 deducted for the cost of agreement, and £1-18 for expenses incurred by Mrs Olsen in going to Invercargill for the child, and acting on my solicitor's advice had refused to give him up (Catran, 1985: 173. Parentheses in source).

The guilt or innocence of Minnie Dean has remained a legal debating point. It attracted further public interest a century later when her case was dramatised as an episode of a television series about her defence lawyer, A. C. Hanlon. Catran, in his book of that series, implied that Victorian New Zealand society had an ambivalent and hypocritical attitude towards baby-farming. On the one hand, it was a social necessity for the disposal of stigmatised children, and on the other, a social evil which permitted children to be bought, sold and traded with few constraints. The baby-farmer herself was reviled for her occupation, considered to be

> . . . a sordid and mercenary one. . . . Bastard children were a shame and, among the lower classes, an encumberance. It was the woman who bore the shame and for the working woman who wanted to go on working, the only recourse was the baby-farmer. The father contributed money and the child was "farmed-out" through a process of legal adoption to a woman who would undertake to care for it and find it a new home. All too often that new home was a grave. Child mortality

> was high and an unscrupulous baby-farmer could kill off her infant charges quite easily: a deliberately poor diet and insanitary conditions would kill off the most healthy child (Catran, 1985: 27).

Moreover, baby-farmers were feared as potential blackmailers when shameful secrets were revealed to them. Dean claimed that it was out of loyalty to her clients that, after the second coroner's hearing, she refused the police the names and addresses of children in care and their parents. She reiterated that stance in her prison statements.

> Of all those that I have befriended and whose secrets I have kept, there has not been one come forward to offer me a word of sympathy, or ask if I had a shilling to pay for my defence, but as soon as it is known that I have left a statement they will begin shaking in their shoes, afraid that their names will be divulged, but they have no reason to fear, morbid curiosity will never be gratified by me (Catran, 1985: 175).

As a direct result of these attitudes and the practices they engendered, New Zealand authorities introduced ways to govern the paid foster care of infants by strangers. To the public, the passing of the *Infant Life Protection Act* must have been fully justified when its enforcement led to a conviction for murder.

The Act required that anyone who for payment or reward received into care infants under the age of two years for periods longer than three consecutive days had to register their house with the police. The police in turn were required to keep a register of houses and the names of occupiers. Certificates of registration were issued and had to be renewed annually in December. The police, accompanied by a registered medical practitioner, could inspect any registered foster home at any time. The occupiers were required to keep a register of children in their care, showing dates of admission and discharge and particulars of parents or guardians. The Commissioner of Police could revoke registration and uplift children and place them in another foster home, or, ". . . if within moderate distance, to the nearest industrial school, the manager whereof shall then be charged with the care of such infants"(s.12). Notice of intention to revoke was to be given by the Commissioner, and his decision could be

appealed to the Minister of Defence [in charge of police]. When a child in a registered home died, the occupier had twenty-four hours to report the death to the police, who would arrange a coroner's inquest, the result of which was to be reported to the Minister. Failure to register as a foster home carried the penalties of up to six months in jail or a fine of no more than twenty-five pounds.

The Act also applied to adopted infants or to children under the age of three years taken into any home with a view to adoption. Adopted children were exempted when the Act was re-enacted in 1896, and the age threshold was raised to four years. At the same time, near relatives, or " Any person as to whom the Minister is satisfied the provisions should not apply" (s.4 [c]), could apply for a Ministerial warrant to exempt them from the Act.

Administration of this legislation passed to the Department of Education when it was further re-enacted in 1907. The age threshold was raised again, this time to six years where it has since remained. The next year it was incorporated as Part V of the consolidating *Infants Act, 1908.*

Paid Servants. The "Local Visitors" empowered by the *Industrial Schools Act Regulations*, gave way early in the new century to paid officers of the Department of Education. The work had been too extensive for the managers of industrial schools to keep up, and some doubt about their impartiality had been raised by various commissions of enquiry (Beck, 1954). Similarly, the work formerly done by the police under the *Infants Act* was reassigned to *visiting nurses* in 1907, a role taken over by visiting officers when Education assumed control of the licensing and inspection of foster homes in 1908 (Beck, 1954: 90-1).

By the end of this period, what had begun as two separate practices in foster care had merged into one administrative service. The first development, boarding-out from industrial schools, was seen to be no more costly and, in the interests of the children, preferable to incarceration in an institution. It had already been practised as *private care* by provincial charitable aid boards.

Quickly put into effect, it became within twenty-five years a large portion of child care work, done by specialist workers. The second development, the licensing of infant homes, made the state the arbiter and controller of private foster care. Hitherto, illegitimate and unwanted children were condemned by Victorian morality to be traded in the sordid and secretive markets of the baby-farm, whose perils created public indignation when revealed. First concerned for those under two years of age, by 1907 the scope of this protectionist practice had widened to cover children under six years. Supervision of infant foster homes was combined with boarding-out work of the Department of Education in 1908.

Child Protection

Up to 1890, most of the provisions governing children were predicated on irretrievable family breakdown or serious offending by youngsters; parents knew best and they were left to get on with it. A major development in children's rights overrode and limited that guardianship authority with the passing of *An Act for the Prevention of Cruelty to and Better Protection of Children, 1890* (short title, *The Children's Protection Act*). For the first time, the state took to itself the power to invigilate the *quality* of family life, including the powers of household search and arrest.

The Act tried to cover most contingencies for children, in this case defined as boys under fourteen and girls under sixteen years. Anyone who was alleged to have mistreated or neglected children, or who exploited them for monetary gain, could be arrested and taken into custody for the protection of the children. For the first time also, power was given to the court to remand children in custody when their parents or caregivers were accused of crimes against them. In the absence of documentary proof, courts were empowered to make presumptions about the age of the victim. In the case of of the evidence of "a child of tender years", corroboration by material evidence was required. Restrictions on the employment of children were included to prevent physical exploitation and moral contamination. Begging, busking and attendance at

licenced premises (selling spirituous liquor) was specifically forbidden. In that connection, magistrates could assign inspectors appointed under the *Employment of Females and Others Act, 1885*, to enforce licences issued to exempt children performing in entertainments.

This was not an act to outlaw corporal punishment. The Act clearly spelt-out, in s.14, that nothing therein was intended to interfere with the right of a " parent, teacher or other person having lawful control" to administer reasonable punishment to the child. This Act subsequently became Part IV of the *Infants Act, 1908*.

Consolidation of Provisions: *The Infants Act,1908*

As part of a wider and periodic legislative revision, *The Statutes Amendment Act, 1908*, created *The Infants Act,1908*, divided into five parts, and bringing together the previously separate legislation discussed in this chapter. Part I consisted of guardianship and custody, and Part II contracts and wills of infants. Part III was adoption, Part IV protection and Part V infants' homes for foster care. This Act defined *infant* as anyone under the age of twenty-one years, although each part specified the ages of children to which certain provisions applied.

NEW PATTERNS OF CONTROL

Given that the state had decided in 1867 to intervene in family life to remove neglected or criminal children to industrial schools, the issue of how to distinguish between deserving and undeserving children, between the innocent and the irredeemable, had not yet been solved in practice. As a palpable trend, policy-makers' opinions were clearly spaced along a continuum which at one pole saw no reason to treat children, especially juvenile offenders, differently from adults, and at the other pole considered all children to be victims of circumstance. This period is notable for the attempts to introduce

differential treatment for juvenile offenders during arraignment and in subsequent disposition. Cumulatively, changes in legislation and practice added up to a loose but discernibly separate system of juvenile justice by 1913.

The burgeoning of the industrial schools system led in turn to calls for the separation of offenders from dependent children, for greater public accountability in the administration of both state and private schools, and for a limit to the alleged abuses by churches of securing child converts by admitting them to care. The response of the protectionist state seems, in retrospect, predictable and inevitable. In addition to extending its powers over children, the New Zealand state apparatus took control of the agencies ministering to children, a story told in part in the earlier account of foster care regulation. In so doing, it set a pattern of highly centralised governmental administration which has remained a feature of New Zealand politics in general, and of welfare and children's issues in particular.

This section deals first with children as defendants before the courts and then with the changes made to that system which received them.

Children Before the Law

Two policy questions concerning young offenders were canvassed and finally determined after 1880. First, are children as equally culpable as adults? Should some allowance be made for children and young persons on the grounds that by reason of immaturity they may not be fully responsible for their actions? Second, should the procedures of arrest, arraignment, representation and custody be changed to recognise the needs of children? What actually developed were special ways of dealing with children in each of two parallel jurisdictions, the criminal code and the *child-saving code*, the latter being the forerunner of the Children's Court. It is not generally appreciated that no separate code of juvenile offences existed, but rather that children and young persons were subject to the same criminal code as adults (as young persons still are in 1987); only the legal procedures, the possible outcomes, and

reduced legal rights were different. That the ostensible benefits of such special consideration may not be fair to children was not questioned for nearly a century. Before turning to the details of these innovations, the way in which the the legal system treated children in the late nineteenth century is outlined.

Children in prison. Young offenders continued to be imprisoned in substantial numbers. Despite the appearance in 1881 of an advocate against that practice, the Inspector-General of Prisons—Captain Hume—it did not decline until 1896. During his term of office, Hume continued to be a forthright critic of sending children to prison and included pleas against it in each of his annual reports submitted to Parliament. He made brief mention of it in his first report and at the end of his second year he wrote:

> I regret to have to report that, at my visits of inspections to the larger prisons during the past year, I have from time to time found many boys and youths undergoing sentences, and deem it my duty to respectfully point out, in reference to the treatment of these juvenile offenders, that in my opinion much requires to be done in the direction of establishing a sound reformatory system which shall have the effect of preventing the growth of adult criminals (AJHR, 1983, H.7: 2).

As a solution to the problem, Hume went on to outline a plan for a type of horticultural training farm, concentrating on the production of flax, and with minimal prison-like features. He had been much taken with the system operated by the Philanthropic Society's Farm School at Red Hill, Surrey, England, and thought the scheme worthy of copying here. "The system of management and discipline is made as kind, persuasive, and intelligent as possible, the great object being to interest the boy himself in the business of his reformation, and induce him to improve and regulate himself for his own interest's sake" (AJHR, 1883, H.7: 2). Hume made similar pleas in his annual reports for twenty-seven years, but with little effect. The extent of the practice of imprisoning juveniles is shown in Table 5, the data for which are taken from a selection of those reports.

Hume persisted with his advocacy to the last. He took little satisfaction

from the drop shown in 1891 nor the substantial fall reported for the year 1896, and he wrote somewhat laconically in his final account, "Auckland [Gaol] points out that it is much regretted that five boys under fifteen years of age were committed to gaol during the year. It has been pointed out in former reports that prison is not the proper place for young people of tender years" (AJHR, 1909, H.20: 1).

TABLE 5

Juveniles committed to prisons, 1882—1911

Year	Number under age of 10	Number under age of 15	Total	Source (AJHR)
1882	35	95	130	1883, H.7
1885	40	68	108	1886, H.4
1888	22	88	110	1889, H.7
1891	10	55	65	1892, H.13
1896	2	17	19	1897, H.20
1900	2	23	25	1901, H.20
1906	4	18	22	1907, H.20
1907	0	25	25	1908, H.20
1908	0	15	15	1909, H.20
1911	0	4	4	1912, H.20

Of special interest in Table 5 is the sizeable proportion of children under the age of ten years committed in the years to 1896. Those numbers need to be put in the context of the purpose of imprisonment, which slightly ameliorates the grim picture portrayed.

> Though it does not justify the detention of juveniles in prison, it should be realized that some of those received by the gaols during this period were simply held there briefly while in transit to an industrial school, or were subsequently transferred to such a school (*footnote*: Under s.25 of

> The Industrial Schools Act 1882 the Governor was empowered to transfer to an industrial school any person under the age of 18 who had been sentenced to imprisonment; this could be done either in lieu of the sentence or after the youth had served his term or any part of it. The age limit was increased to 19 by s.3 of the Industrial Schools Amendment Act 1909). Some idea of the relationship between imprisonment and commital to an industrial school is provided by a return relating to all inmates of industrial schools on 31 March 1899. Of the 571 children, 104 had been committed as offenders, and of these 22 were described as "convicted and sentenced to be imprisoned". the terms of imprisonment were; one hour, seven days, one month and two years [the boy on whom this sentence had been passed had been transferred to an industrial school after 29 days] (*footnote:* . . .Three other offenders received combined sentences, being convicted and sentenced to be whipped before being sent to an industrial school) (Seymour,1976: 16.).

There was a belief that some magistrates preferred to dismiss cases against juveniles rather than send them to gaol (Seymour,1976: 17). So, while some of the individual officials were not without compassion, the system itself left few options for sentencing magistrates. The position was made no better by the confusion over the failure to set up reformatories as well as industrial schools. These had been promised by s.4 of the 1867 *Neglected and Criminal Children Act*, but were not introduced until 1900 by an administrative device.

Criminal responsibility. Two traditional legal defences, *mens rea* —guilty mind— and *doli incapax* —incapable of forming intent—were to have an influence on the changing status of children before the law. *Mens rea* had in common law applied to children of "tender years", on the basis that very young children, like the insane, were incapable of forming malicious intent to commit a crime. In other words, they did not know that what they were doing was wrong. New Zealand magistrates took a rather conservative view of the demarcation age, as shown by the five and six olds convicted of offences (AJHR,1899, E3B: 2).

A legislative limit to the criminal responsibility of children was enacted for the first time in the *Criminal Code Act, 1893*, s.22, which provided that a conviction could not be entered on anyone under seven years of age.

So-called *combined sentences* allowed courts to add a whipping to the usual penalties of fines or imprisonment. The formula " if a male under the age of sixteen years, with or without a whipping", introduced in the 1860s, remained a possibility to be applied to boys and it was appended to most legislation covering offences against persons and property. A fictional account, based on personal experience, is given of the execution of a sentence of "six strokes of the birch" in *Children of the poor* (Lee, 1934: 230-8).

Children's Courts and Probation

Internationally, the innovation of special courts for children was accompanied by dispositions which included ideas of treatment and rehabilitation. Juvenile probation, supervision and suspended sentences were tactics which were used to make the juvenile offender accountable to the court, before which the youngster could be brought again if the treatment approach failed to work. Begun when offenders were first paroled into the care of responsible citizens, in time most jurisdictions developed a dual system of volunteers and officials employed as probation officers. The New Zealand system of juvenile probation and children's courts evolved piecemeal over the period 1886 to 1917, and their origins are now described separately.

Juvenile Probation. Long before children's courts appeared, the framework for probation was put in place by the first legislation, *The First Offenders' Probation Act,1886.* No paid officials were provided for the courts, and the tasks were carried out by the prison gaoler, or in other localities, by the senior police officer (AJHR,1887, H8: 5). There was considerable uncertainty by magistrates as to which age groups the Act was to apply, and the mechanism it provided for juveniles to be diverted from prison and industrial schools was not fully utilised until over twenty years later.

> Though they did not specifically refer to juveniles, this Act and its successor [The First Offenders' Probation Act, 1908] offered the courts a course which was particularly appropriate for youthful offenders, but surprisingly little use was made of it. . . . It was not until after the turn of

> the century that the use of probation had a real impact on the development of the juvenile justice system. When this occurred the important innovations took place outside the framework of the probation statutes, for they were the result of the courts' creation of informal types of supervision. Reports written by Stipendary Magistrates in 1910 showed that some of them were making use of voluntary helpers in their dealings with juveniles. In Christchurch, for example, the Presbyterian Social Service Association appointed an "agent" to specialise in juvenile court work; this man—the Rev. Mr Rule—performed many of the functions of the present day Social Worker. Similarly in Dunedin the Rev. Mr Axelsen prepared court reports on juveniles, and exercised supervision over those placed in his charge (Seymour,1976: 22-3).

Probation as the outcome of a court appearance by a juvenile started at around fifteen per cent of releases for all ages in 1887 and dropped to less than one per cent, or one case per year, by 1911. In an effort to use that procedure to forestall unnecessary admissions to industrial schools, the Department of Education appointed a *juvenile probation officer*—F. S. Shell—to the Auckland courts as an experiment. By an informal arrangement between the police and magistrates, Shell would be notified of boys appearing and undertake to report to the magistrate on those who seemed to have some chance for non-custodial rehabilitation. As well as those duties, he also ran a small hostel, providing board for which his Department reimbursed him at the rate for each boy of one shilling per day (Cupit, 1950: 13-4). By such practices, yet another dimension was added to the child welfare tasks carried out by the Special Schools Branch, Department of Education, and later in 1912 all their visiting officers became unofficial probation officers (AJHR, 1912, E4: 3).

Children's Courts. Recognition of the vulnerability of child offenders and child victims resulted in close scrutiny of existing methods of disposition and the introduction of new methods during this period. There were four distinct phases in the progression towards a special court for children. The first had its origins in legislative changes which empowered lower courts to deal summarily with juveniles charged with indictable offences and which actually limited the rights of children. The second phase was a change of courtroom form and procedure practices by magistrates who believed juveniles merited differential treatment.

The third phase was the first legislative attempt to standardise those practices. Finally, there was yet another campaign by officials and magistrates to have courts for juveniles separated from those for adults. An outline of each of these phases follows.

An Ordinance for extending the powers of Police Magistrates, 1842, allowed magistrates to deal with charges of theft where the value of the property did not exceed twenty shillings. The maximum penalty that a magistrate could impose was six months imprisonment, and although juvenile offenders were not mentioned, the provision covered them as well. From details given in the preamble to the ordinance, its introduction appeared to have been a measure to counter pre-trial imprisonment which was longer than any subsequent penalty handed down (Seymour, 1976: 27). Also of benefit to young persons was a clause that allowed magistrates to dismiss trivial charges.

Later, the jurisdiction of lower courts was extended to deal summarily with more serious offences for persons of all ages.[4] The first significant move to treat children differently from adults came in *The Resident Magistrates Criminal Jurisdiction Extension and Amendment Act, 1865*. Under Section IV, those courts could then deal with children and young persons under fifteen years of age on theft or related charges, sending them to prison for up to two months, and adding a whipping for boys. The same powers were vested in J.P.s' courts, by *The Justices of the Peace Acts* of 1866 and 1882. The effects of these extended powers were to deprive children of the right to trial by jury and, one could claim, to the greater rigour of *good form* and procedure characteristic of the superior courts.

The *Justices of the Peace Act, 1882*, created a new age classification for infants-at-law together with differential treatment for two of the the three groups

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[4] Seymour (1976: 28) makes the point that the courts were in a state of formative flux until 1866. Resident magistrates, with the authority equal to two justices of the peace, were replaced in 1893 by stipendary magistrates. In this chapter, the term *magistrate* is intended to denote the bench of any lower court.

under twenty-one years of age. Children were defined as those under twelve years, young persons those twelve and under sixteen years, and those sixteen and over were to be treated as adults in the criminal jurisdiction.

An amendment in the 1882 version, made summary hearing of indictable offences (excluding homicide) against children subject to parental consent, and to the wish of the presiding J.P.s. Young persons could consent in their own right. While consent, personal or parental, offered some limit to the hazards of summary proceedings, it introduced a type of "double jeopardy" for children. That is, child defendants did not have the right to elect trial by jury or to plead in the superior courts, but J. P.'s could send them on for hearing on indictable offences. Such a tactic is quite common in legal systems offering summary justice with reduced maximum sentencing powers. Under the 1882 Act, the maximum penalties for children were imprisonment not exceeding one month and/or a fine up to 40 shillings. The maximum penalty for young persons was three months imprisonment with or without hard labour. When there was public concern about the alleged offence, lower courts could refuse jurisdiction, ensuring that if the offence was proven a heavier penalty would result.

The second phase of development was active support for the notion of separate courts for juvenile offenders by some magistrates and changes to their courtroom procedures which demonstrated those beliefs. Although a little support had come from magistrates themselves for ways and means of achieving this (AJHR, 1891, H4: 3-4), it was not until after the turn of century that some took matters into their own hands and began to hold hearings in private (AJHR, 1910, H.20A: 2).

The third phase, legislation regularising such practices, took place in 1906 with the passage of *The Juvenile Offenders Act*. Its passage through both Houses attracted comments which showed the divisive nature of law-and-order issues when traditional values and beliefs are challenged. It was portrayed in the lower House as simply a device to give the force of law to

what had been ". . . the practices of many Magistrates in this colony for some considerable time past" (NZPD, 1906, 137: 550). Confirmation of that "limited scope", which for Seymour sums up this Act, can be found in its length of six short sections, and in its long title as *An Act to make Better Provision for the Hearing of Charges against Juvenile Offenders* (1976: 29). Despite that brevity and its concern only with the "hearing of charges", it did introduce a number of innovations foreshadowing practices laid down in later legislation.

The Act defined juveniles as persons under the age of sixteen years. It required, in s.3(1), the constable having charge of the case to make a "special report thereon, either verbally or in writing". Thus began one of the practices of the child-saving era which offered children lesser legal rights in the belief that it afforded them greater protection. In adult courts under British common law, the character or biography of the defendant is not examinable or salient to the case unless he or she introduces it. Neither can the defendant be forced to testify. These, and similar coventions, are connected with the presumption of innocence rule.

> A criminal charge must be tried upon its own merits, and all evidence tending to show that the accused is of bad character, or that he has a previous criminal record, must be rigorously excluded from the knowledge of the Court or the jury until after conviction. . . . The general rule is therefore that no evidence which reflects upon the character of the accused may be advanced by the prosecution *during the trial* (O'Keefe and Farrands, 1976: 246. Emphasis in original).

While the idea of a pre-trial social history investigation and report to the court was deemed to be in the best interests of children and young persons, the contaminating effects led to the next step that the alleged offence itself assumed lesser importance than the physical and moral safety of the child. It opened the way for children to be tried not on the merits of the accusations, but on the character and capabilities of their parents or caregivers.

The intent of this *special report* becomes clear in the other sub-sections of s.3. In s.3(2), the magistrate was required to fix a "special hour" for the hearing

of the charges, give notice to the parents and, if he thought fit, " . . . to any religious or charitable organisation or any public institution which interests itself in the care of children". Pre-trial custody was dealt with in s.3(3), requiring the magistrate to give custody of arrested defendants to a suitable person, or allowing the prosecuting constable to arrange for ". . . him to be taken care of pending the hearing without reference to the Magistrate". That same section expressly forbade remand to a goal or lock-up unless the safe custody of the accused could not otherwise be provided for.

The Act also provided (s.4) for magistrates to clear the courtroom of all persons except parents, counsel, witnesses, reporters and welfare workers. The final innovation, in s.5, allowed for the juvenile offender to be admonished and discharged without a conviction being recorded. This too, was a protectionist device of doubtful validity. It established the right of those under the age of sixteen to escape the later stigma of childhood escapades, but at the same time severely reduced the standard required to prove the alleged offence. As no penalty was applied, except perhaps an order for costs and damages against the child or parent, it provided between absolute dismissal and a conviction an option which would satisfy all parties. The fact remained that it amounted to the establishment of guilt and, therefore, would be interpreted as a conviction in subsequent proceedings or in character references.

The fourth phase of development followed the failure of the courts to give effect to the spirit of the 1906 Act. In the legislative re-organization of 1908, the core of *The Juvenile Offenders Act, 1906*, was incorporated as Part III of *The Justices of the Peace Act.* Practices for the hearing of juvenile charges varied greatly up and down the country until a separate children's court was established. This phase is included in the next chapter.

The outcome of these changes was to create a dual system for dealing with children and young persons. They remained subject to the criminal code and to a watered-down version of all the sentences applicable to adults. Parallel to this, they could also be dealt with under the industrial schools

provisions which intertwined with the criminal code. The connection between the two allowed for three options. (1.) Young offenders could be dealt with exclusively under the J.P's Act, and face penalties ranging from an admonition and discharge through to imprisonment. (2.) The same courts could commit them directly into industrial school care or (3.) impose a criminal court sentence—commonly a whipping—to be followed by committal to an industrial school, or from 1900, a reformatory. That mixture of adult and juvenile penalties was to persist even after the creation of children's courts.

At that time, the good intentions of the policy-makers to separate children from adult offenders, to provide pre-trial custody and to minimise the effects of a juvenile criminal record seemed laudable. However, such protection for children was gained only at the expense of a reduction in their rights to the same legal status as adults. *The Juvenile Offenders Act,1906*, is a good example of the proposition that the remedies introduced to afford protection to children were in time to become problems themselves.

Residential Care: The Rise and Decline of Industrial Schools

In New Zealand, as in Britain and America, the period from 1880 to the First World War can be regarded as the *Golden Age* of the child-rescue movement. Barnardo of Stepney and the Methodist child-saver, Thomas Bowman Stephenson of the National Children's Home, became well-known in Britain, parallelling the evangelism of their contemporary Jane Addams in the U.S.A., all driven, in Platt's term, by "the new religion of social service" (1969: 94). It was a time of expansion, consolidation and favourable public support for institution-based agencies. A similar expansion of residential schools for the special education of exceptional children is described in the education section of this chapter. The expansion was not accepted uncritically, and questions of cost, treatment, denominationalism and accountability gathered greater momentum around the turn of the century.

From the earliest times, issues of scale and cost-effectiveness had dictated

most practices, and quality child care was one casualty. The failed aspirations of English Poor Law architects to provide separate institutions for the deserving and the undeserving were to be repeated here. The size of the population and its scattered distribution across two main islands had consequences that gave New Zealand problems of location and differentiation in child-care services right to the present day. In brief, lack of resources meant that not every locality could sustain institutions, and residents were drawn from many places, separating them from their families. The fashion to site charitable institutions, especially asylums for children or the insane, in the country also separated residents from experiences of normal community living. Of most importance, and a continual debating point for the public and policy-makers, was the practice of mixing dependent and delinquent children and, in some cases, boys and girls of all ages, in the one place. The provincial governments having been abandoned, residential care for children developed into a twin system, one run largely by the churches and catering for the younger and more tractable, the other by the state. Each is discussed in turn.

Non-state Institutions for Children

The Anglicans, Wesleyan Methodists and Roman Catholics who had been first on the scene were followed into the children's homes business by all other denominations. Caring for children in institutions was a major activity of the social service arms of the churches. Many agencies which were ostensibly secular, had trust deeds or practices giving control to one denomination or favouring children of that religion, such as the Dilworth Ulster Institute Trust (SNZ, 1912: 9). Exact numbers of such institutions are difficult to ascertain because registration was not mandatory, but it seems likely from other evidence that by 1913 there were around eighty, of diverse size and purpose, more than fifty of which had been set up since 1880 (AJHR, 1885, E.3: 2; AJHR, 1927, E.4: 8). It is difficult to classify these institutions other than by auspices. Some had clearly defined purposes, such as the nursery homes for infants set up by the Salvation Army, but others, the Mt Magdala institution of the Good Shepherd Sisters, at Halswell, near Christchurch, for example, which provided both

short-stay and life-long care for girls and women, developed into all-purpose refuges. The larger institutions tended to be solely for either girls or for boys; there was a greater number of places for the latter.

Financial support. A further problem of classification derives from the lack of distinction between industrial schools and orphanages, and whether or not they accepted committed children. Much of this confusion had to do with the source of funding and state grants.

> There are two classes of children maintained in the industrial schools and orphanages: (1) Children committed to proclaimed industrial schools under the provisions of "The Industrial Schools Act, 1882," and (2) orphan and destitute children not so committed. The latter class comprises children admitted by the local governing body at its own instance, for whose maintenance payment from the public revenue is not always made; and children admitted on the order of a Government relieving officer, on whose account a capitation payment is made by the Government (AJHR, 1885, E.3: 2).

The funding question was determined by the the status of the child. The responsibility for the maintenance of non-committed children admitted by relieving officers had rested with the Charitable Aid Boards of the former provincial governments. The Boards were saved from half of this expenditure when the *Hospitals and Charitable Aid Act, 1885*, gave central government, namely the Colonial Secretary, the task of disbursing the Charitable Aid vote. There was no standard payment. The rate payable in 1885 to private industrial schools in Auckland Province which took committed children was a pound-for-pound subsidy on all donations raised together with an annual capitation grant of £10 for each child committed under the Act or placed with them by authority of the government. The Roman Catholic institutions at Wellington and Nelson received a flat rate of one shilling per day for both committed and non-committed government sponsored children. At the private institution at Motueka each child attracted eight shillings per week. All costs of the local authority institutions at Thames and Lyttelton were a charge on the Charitable Aid vote (AJHR, 1885, E.3: 1).

The private agencies were caught in arguments between central government and the regional charitable aid boards, and both agencies and the boards put continual pressure on government to meet all of the costs for children maintained under charitable aid. When the Minister of Education asked the Special Schools Branch to look at this matter in 1911, there were 671 children being maintained by the four biggest charitable aid boards, as shown in Table 6.

TABLE 6

Number of children resident in Industrial Schools and maintained by the four principal Charitable Aid Boards, 1910.

Name of Board	Government school	Private school	Totals
Auckland	40	13	53
Wellington	232	29	261
Christchurch	117	11	128
Otago	172	57	229
All Boards	561	110	671

(Source: NANZ, CW. 40/1/1.)

The Officer-in-Charge, Special Schools Branch, R. H. Pope, in preparing his report for transmission to the Minister on children in industrial schools, orphanages and private care, wrote that:

> The total number of children maintained by Charitable Aid Boards for the year1909 was 1259 and the cost £18,671. The Government paid half that amount by way of subsidy. If the whole charge were upon the Government it would not be less than to the Charitable Aid Boards, i.e., roughly the Government would pay an additional £9,000 a year for the numbers as at present (NANZ, CW. 40/1/1).

To which the Inspector-General of Schools, G. Hogben, added:

> Hon. Minister
>
> If the whole charge for destitute children were thrown upon the Government, I am afraid that there would be a tendency for some of the Charitable Aid Boards to throw an increasing burden upon the Government, even if it involved the breaking up of homes, *in order to relieve the rates.* This tendency would be less if half the cost were paid by the Charitable Boards, or say 4/- a week per child. The nominal cost to the board would then be reduced by about £9,000; the actual cost to the Government would be about £4,500. If this be approved, I should be in favour of bringing all destitute children under the control of the Department (NANZ, CW. 40/1/1. Emphasis added).

Relieving the rates was always a foremost consideration for the Boards, who remained in the position of having to pay towards the cost of maintaining children on a confusing array of conditions: committed or not committed; in private foster care, resident in industrial schools and orphanages, or boarded out; resident within the province or resident in another province; belonging to one church and resident in a contrary institution. Acting as the bookkeeper and mediator was a tiresome task, fraught with political and religious traps (Chilton, 1968). Boards had lost the power of determining placement to the Minister of Education, so that when in 1893 the Charitable Aid Board, United Districts of Central Otago, Tuapeka and Otago, complained of Otago children transferred to Burnham Industrial School in Canterbury Province, they got little enlightenment. The Minister, W.P. Reeves, replied that transfers were frequently made but that the reasons were never made public. Courteously, he added that the case in point was not intended as a reflection on the United Districts Board (NANZ, CW 3/5/1).

To survive, the church agencies needed to gain a maximum of government support; one way to force the issue was to claim assiduously the right to care for children of their own denomination.

Denominationalism. The arguments and confrontations leading up to the secularisation of the state education system 1877, were later to be repeated in

the child care arena. However, the issues in regard to industrial schools and orphanages, if no different in principle, were much more complex in practice. It was plain for all to see that the succour of children was charitable work of the highest order and a legitimate activity of church sponsorship and fund-raising. Private charity was to be preferred to state assistance, which would sap initiative, *raise the rates*, and, in the words of the Inspector-General of Hospitals and Charitable Aid, "dry up the well-springs of charity" (AJHR, 1891, H.7). Subsidies had been paid for children in industrial schools and orphanages who might otherwise have been charges upon charitable aid boards. We have already seen how, in Auckland in 1869 , church authorities of a children's home shrank from continued operations when no further financial assistance was forthcoming from charitable aid boards. Yet, at the time of pressure, the government had given way to the Otago demand for the state to take over, with the 1867 Act, the care of neglected and criminal children. As committal to care abrogated most rights of parents, except the right to dictate religious denomination, correct education in the nominated religion of wards was punctiliously observed. That being the case, it made sense for them to be nurtured by their own faith wherever possible. Of all denominations, the Roman Catholic authorities made great efforts to ensure that all committed Catholic children were sent to their own institutions (Whelan, 1956: 119-20). In all of this, and unlike the general school system, the difficulty lay in trying to decide whether child rescue work was a state responsibility for which non-state agencies might be paid when they helped out, or whether it was charitable work to which the state might contribute at its discretion. Not unnaturally, the church homes wanted their residents to attract a state subsidy.

Under the *Industrial Schools Act, 1882*, it was required that the magistrate state in the committal order ". . . to what religious persuasion, creed, or denomination such child in his opinion belongs, and shall order and direct that such child be brought up and educated in that persuasion, creed or denomination" (s.5). That direction applied to any subsequent placement of the child on licence, except as a servant (s.54). As more church-owned institutions became established, the question was asked whether or not children committed

to state institutions should be transferred automatically to institutions of their own denomination.

The Roman Catholic authorities were the first to force the issue and, in the long run, was the lobby which led to a counter-determination by the bureaucrats to limit the growth of state-subsidised denominational industrial schools. By negotiation with the Minister of Education, the Catholic authorities arranged in 1893 for the mass transfer of all Roman Catholic boys in the state industrial schools at Caversham and Burnham. In May, eight inmates of Burnham, including some ex-inmates of the recently closed Kohimarama, were transferred to St Mary's, Nelson (travelling from Lyttlelton to Nelson via Wellington on the S.S. *Penguin*). Special payments were also negotiated for boys of *vicious habits*, and *semi-idiotic* boys, to remain a charge to the age of fifteen years as both groups lacked appeal for boarding out at no cost (NANZ, CW 3/5/1). That discontinuity between age fifteen as the end of the committal period and government subsidies ceasing at age fourteen was a constant source of irritation to the institution managers. So, too was the size of the board and capitation payments, and for each year between 1907 and 1915 the Roman Catholic managers submitted an application for increased state payments (NANZ, CW. 3/5/1/).

As far back as 1881, Habens had remarked on the practice of Catholic authorities in Australia to favour institutional care over boarding-out, and the difficulties there of soliciting Catholic foster parents (AJHR, 1881, E.6: 1). A similar pattern was evident in New Zealand, and by the turn of the century, the Roman Catholics were the only non-state agency still operating industrial schools. Table 7 shows the distribution of children in all industrial schools as at the end of 1901. It can be seen that, although Catholic schools account for approximately a third all children, they make up more than half of the number actually confined to institutions.

Charitable Aid Boards were not slow to notice that the private industrial schools were all Catholic. Matters came to a head in 1908 with a surge of

anti-Catholicism. The Otago Board made representations to the Minister, and on 7 April its concerns appreared in the *Otago Daily Times*. Allegations were

TABLE 7

Distribution of children on the rolls of Government and Private (Roman Catholic) Industrial Schools at December, 1901.

	Boarded-Out	In Residence	At Service	Totals
Government schools				
Auckland	48	19	30	97
Receiving Home, Wellington	39	2	28	69
Receiving Home, Christchurch	147	10	69	226
Burnham	0	115	166	281
Te Oranga, Christchurch	0	17	29	46
Caversham	184	130	194	508
all government schools	418	293	516	1,227
Private schools				
St Mary's, Auckland	0	96	127	223
St Joseph's, Wellington	0	39	37	76
St Mary's, Nelson	0	194	110	304
St Vincent de Paul's, Dunedin	0	19	8	27
all private schools	0	348	282	630
Totals	418	641	798	1,857

(Source: Adapted from Table T, AJHR, 1902, E.3: 2.)

made that child rescue work was a cheap and easy way of securing converts, together with the fact that so many Catholic children were being raised at the expense of the provincial taxpayer and the state. That same month an Irish Protestant men's group, The Orange Lodge, Nelson, got support at a public meeting to send the following resolution to the Prime Minister:

> That this public meeting representing the Protestant sentiment of the City of Nelson is of the opinion that the private industrial school system operating in the Dominion (as seen at the Stoke Orphanage) is a huge failure, and a distinct menace to the future of this young country, and hereby protests against the practice of the Government in committing boys from Law Courts to these institutions (NANZ, CW. 40/1/1).

The Protestant sentiment was already well known and, in the event, the Nelson protest was unnecessary, for the state administrators had already decided on future policy. Contemporaneously, the Department of Education had before it an application for the proclamation of the Roman Catholic female institution Mt Magdala, near Christchurch, as an industrial school. Departmental minutes summed up the financial position that committed children would cost the state one shilling a day, and a similar charge was proposed on Charitable Aid Boards for non-committed indigent children. Identifying the bogey of money, however, was really a diversionary tactic. The salient issue was that the state had to find ways to forestall the growth of denominationalism and to rebut the damaging allegation that its policies favoured Catholics in particular. The department was now freer from political compromise, since the death in 1906 of Premier Richard Seddon, who had enjoyed an acknowledged Catholic working-class support. R. H. Pope set out three objections to the Mt Magdala application, beginning with the observation that for the past twenty-five years it had been government policy to board young children with foster parents, whereas

> These private institutions keep their children under one roof. (2) The financial stress operates against the chance of the children receiving the care and attention that will enable them to recover the handicap of their earlier lives. (3) Industrial schools are Educational institutions of the highest importance to a country, and the recognition of these private schools immediately raises, in a very serious form, the whole question of Denominational education. . . . in their hands is the moral development of the children (NANZ, CW. 40/1/1).

When the Inspector-General, Hogben, wrote as an addendum to Pope's summary that " The policy of the Government is against increasing the number of private industrial schools" (NANZ, CW. 40/1/1), the matter was closed, and no more private industrial schools were ever proclaimed. Indeed, by this time the private schools were already in decline. Pope's allegation about the standard of care, and Hogben's resolve, were undoubtedly based primarily on an incident at Stoke some eight years before. That, and later events at the same

school proved this caution prophetic, and helped to show the exigencies of a philosophy that wanted both control of children and minimal governmental interference.

The first Stoke scandal. On 30 May, 1900, members of the the Nelson Charitable Aid Board made an unannounced visit to the boys' section of the St Mary's Industrial School, run by the Marist Brothers, at Stoke, near Nelson. It was called locally *The Orphanage* and, before the year was out, was known throughout New Zealand as *The Stoke Orphanage*, for the serious claims of ill-treatment and mismanagement made by Board members led to a commission of enquiry and widespread publicity. The incident was well documented and the evidence provided rare insights into the life of an industrial school from the point of view of all the actors involved, including the child witnesses.

Within months of his appointment in 1899 as Inspector-General of Schools, George Hogben was despatched to Nelson to investigate when the Board complaints were made known. Allegedly, ". . . he crossed the Strait under an assumed name and arrived at Stoke at an unearthly hour in the morning" (Roth, 1952: 89). Although Hogben's name does appear in the official publications, he was closely involved in advising both the Premier and the Minister of Education with whom he was coupled in harassment by the Parliamentary Opposition, first

> . . . in the debate on the Education estimates on a motion to reduce Hogben's salary by £1. . .[and then] . . . There was an attempt by Pirani and G.W. Russell, the new Member for Riccarton, to make Hogben the main scapegoat of the whole affair because his report on the his first surprise visit had been submitted to the Minister of Education and not directly to the police, but Seddon resolutely defended him and insisted that if any blame attached then the Government as a whole should be blamed and not an officer who had been in his position only a few months (Roth, 1952: 91).

As a result of Hogben's recommendations, and that Parliamentary interest, the government was forced to set up a commission of inquiry. Initially, the terms

of reference limited it "to inquire into and report on the management of the Industrial school for Boys at Stoke, and the treatment of the inmates therein within the last two years", together with any other matter discovered or submitted before the Commission. A fresh warrant extending the retrospective period to five years was issued just a few weeks later ". . . when the Opposition produced sworn statements from former pupils" (Roth,1952: 90).

The complaints of the Nelson Charitable Aid Board were then formally submitted and became the basis for the enquiry. These covered seven points as follows:

1. That although many of the boys at the school are very young, the school is entirely under the management of unmarried men, no matron having been employed there for many years.
2. That the punishment of the boys at the school has been and is more severe than is allowed at Government industrial schools, and is more severe than should be allowed in such a school as St. Mary's.
3. That the boys' food has been and is insufficient in quantity, poor in quality, and not sufficiently varied.
4. That the boys have been and are poorly and insufficiently clothed.
5. That certain of the work required to be performed by the inmates has been and is too hard, especially for lads of tender years.
6. That boys who have died at the school have been buried in the grounds connected with the school.
7. That St. Mary's Industrial School, being a private school under the "The Industrial Schools Act, 1882," stands on a different footing to Government industrial schools, and is not subject to the same supervision and inspection as Government schools, although the majority of boys at the school are committed there by Magistrates, and are supported by Government or Charitable Aid Boards (AJHR, 1900, E.3B: 2-3).

Their report, and subsequent instructions by the Minister of Education to the school manager, was completed in five weeks and submitted to the House on 28 August, 1900 (AJHR, 1900, E.3B). The Commission found all of the complaints to be justified except number 5, that relating to work required of the boys. Some illustrative extracts from the seventy-seven pages of verbatim evidence (AJHR, 1900, E.3B: 13-99), and a summary of the Commission's recommendations follow .

The chairman of the Nelson Charitable Aid Board—G. M. Rout—was examined about the matters he had complained of subsequent to his visit of inspection. He told how on pressing the manager, he and his party had gained access to two unfurnished, makeshift cells each occupied by a boy. The boys told of being beaten on the hands with a cane. It was admitted by the staff that one previous occupant of a cell had been confined for two months, in accordance with the rule that time spent in solitary confinement was to equal the time absent without leave (AJHR, 1900, E.3B: 13-8).

Thomas Lane, an inmate, was examined about the complaints. In relation to the food, he explained that they ate Irish stew every day except Friday when they had potatoes and bread. Lane was cook for three months and made the stew which was boiled in a copper. He felt the food was insufficient and he had seen boys, who were always hungry, eating raw potatoes and turnips (AJHR, 1900, E.3B: 19-24).

The wives of two local farmers who had taken boys on service gave evidence of the state their clothing. The boys they saw had dirty, ragged clothes insufficient to keep them warm. An ex-inmate, then on the farm staff, gave evidence of the work the boys were expected to do carrying heavy poles down from the plantation. Others inmates and ex-inmates, members of the charitable aid board, the visiting doctor, and the Officer in Charge of Special Schools—R. H. Pope—Department of Education, all gave evidence of poor conditions, ill-treatment and mismanagement.

The Commission having had a hint that the school management was ready to agree to substantial changes, the overall tone of its report was not entirely unsympathetic but its recommendations were firm. It suggested that regulations governing private industrial schools be prepared immediately to prevent further abuses. It made some specific suggestions on remedies for the itemised complaints which amounted to bringing private schools under the same administrative rules that governed state ones. For example, inspectors or

official visitors were thought desirable. These were immediately relayed to the school's statutory manager, the Very Reverend Dean Mahoney (who was both administratively and physically distant from the scene by his location in Wellington), as instructions from the Minister of Education. The Dean asked for time to implement them, to which by return mail the Minister replied that except for alterations to buildings he wanted an ". . . assurance that they will be fulfilled at once, and without any delay" (AJHR, 1900, E.3B. 11). The item at issue was really the demand "That all the Brothers associated with the past administration of the school shall be at the earliest possible date replaced by others of British nationality and of cheerful disposition" (AJHR, 1900, E.3B: 11). The school management capitulated, and Stoke Industrial School continued in operation for a further twelve years.

Governmental control. The 1882 Act, s.50, had given the state the right to inspect private industrial schools but had not defined by statute the powers of inspectors. Most managing bodies submitted reports from their own visiting medical officers, which were recitals of ailments and causes of residents' deaths. The reports of Department of Education inspectors were, up to this time, solely classroom evaluations of the attainments of the residents (see, for example, the report by W. Ladley, Inspector, who in October, 1897, spent three days examining the boys at Stoke Industrial School. AJHR, 1898, E.3: 5). As a direct outcome of the Stoke affair, regulations were gazetted defining the role of inspectors and setting out requirements and guidelines expected for the efficient and humane running of private and government industrial schools, to which they applied equally. A descriptive account of these regulations, which range from the visitors' book to permissible corporal punishment, was given in the Department's report for 1902 (AJHR, E.3).

John Beck, a young cadet in 1900, and whose subsequent role is examined in the next chapter, became one of those inspectors. He reflected on the significance of the first Stoke scandal

. . . which occurred . . . only a few weeks after joining the office that first

> awakened my interest to the vital human problem lying behind the routine office work on which we were engaged. These were lives with which we were juggling, I suddenly realised, and the immense importance of each decision dawned upon me (Beck, 1952: 2).

Beck took that responsibility seriously enough to precipitate in 1912 the permanent closure of Stoke Industrial School.

The second Stoke scandal. Beck is rather coy in his memoirs about exactly what abuses he found at Stoke while on a clerical audit visit in 1912, but charges of indecent assault by male staff on boy residents were later laid by the police. Beck recollected that he

> reported the matter to Mr Pope, who immediately personally visited the place, thus satisfying himself that my complaints were justified. On the Catholic authorities being notified of the complaints, they decided to close the institution. The buildings and property were purchased by the Department who re-opened it as a Government industrial school (Beck, 1950: 6)

Summary. Most of the major churches abandoned the industrial school enterprise either by translating their institutions into secondary boarding schools, as was the case with St Stephens and Te Aute, or by moving into relatively smaller orphanages as the mode of care for dependent children. The Roman Catholics were the last to retain registration as industrial schools, and even that was modified by set backs of cost and mismanagement. Additionally, the state had to move against their growth because of complaints of denominational prejudice. The review of these institutions has shown that while their treatment may today seem harsh, even barbaric, it was only extreme mistreatment of child residents that excited any protest from officials. Opinions were divided on the issue of whether children in care were any worse off than poor children in their own homes, revealing something of the quality of life for ordinary children. While Stoke is not an adequate yardstick, life for the residents of the state institutions was not too dissimilar in kind, if not in degree, as the next section shows.

State Institutions

The three decades after 1880, the year Education took over the industrial school system from the Justice Department, saw the foundations of a national child welfare agency emerge from that system. At the abolition of the provinces, Justice had assumed control of three schools as central state institutions: the Auckland Industrial School at Howe Street, which ran the notorious Kohimarama Training Hulk as a boys' branch for a very short period; Caversham, the oldest such school, located at Dunedin; and the newer school at Burnham, opened in 1874 by the Canterbury Provincial Government. Reviewed earlier in this chapter, the introduction of boarding-out from 1883 initially strengthened and later weakened the influence of the schools, as the task of supervising foster care was found to be too extensive for managers to handle. Many of the commitals to industrial schools became paper transactions only, leading to the quaint but not untypical situation of a ten-month-old child in foster care in Wanganui but nominally committed to Burnham Industrial School—400 miles distant—as the closest school.

The child-rescue movement was in full swing during this period. Initially, the introduction of boarding-out as an option to residential care helped to inflate the control functions of the institutions, but the task was too big for them and, in the view of some officials, incompatible with the control functions. The encroachment of the state in the child-protection enterprise served as both a model and a constraint upon the traditional functions of the non-state agencies. The state was forced into the position of protecting children from those whom it had sanctioned to undertake child rescue.

Demands for classification between deserving and undeserving children and differential placements resulted from a growing disquiet about the functions of industrial schools. The power of industrial school managers began to be eroded with the formation of a centralised bureaucracy and inspectorate, and

the introduction of a standardised system of residential care. By 1913 the writing was on the wall; the *coup de grace* was soon afterwards to be administered in the reforms of John Beck.

EDUCATION

The growth of a national system of state schools, inaugurated by the *Education Act,1877*, raised the issue of what was to be done with those exceptional children whose needs were unmet by the typical primary school, or who were unacceptable in such schools. At that time,

> . . . only two comparatively small groups of handicapped children were generally recognised as deserving special consideration—the deaf and the blind. The Government met the cost of sending some of these children to special schools in Australia until [schools were established]. . . . and the comparatively liberal provisions that were made by the Government for meeting the cost of paying for the education of the children who attended them as boarders or day pupils gave New Zealand a good start in the provision of education for its handicapped pupils, but they had little impact on the work of the teachers in primary schools. . . . Unless a child had an obvious mental or physical handicap or was frequently absent from school, his poor progress was attributed to lack of effort on his own part or to lack of interest by his parents (Ross, 1972: 19-20).

Anything other than the provision of segregated special schools for exceptional children had to wait forty years from the passing of the *Education Act*. This was particularly so in the case of backward, or educationally sub-normal children, most of whom had no behavioural problems warranting separation from parents and isolation in closed institutions, as the special schools proved to be. The issue of dealing with backward children in the ordinary school had its first official beginnings in 1892, when headteachers of some provinces had been asked to give reasons for retaining children over eight years of age in infant classes. A combination of environmental and individual factors were isolated by school inspectors which showed ". . . a broad understanding of the problems of causation. . . . Until 1900, inspectors' reports

continued to deal with the problems presented by backward children, but no real advance in understanding seems to have been made" (Winterbourn, 1944:20-1). In that year, regulations enabled headteachers to group children by class subjects according to ability, overcoming some of the difficult consequences of promoting or not promoting the backward pupil along with the age cohort. Provision for the teaching of backward children in day schools has been summarised by Winterbourn:

> Although little was being done in the schools for the backward child during the period reviewed . . . considerable thought was given by a limited number of persons to ways and means of improving his lot. The beginnings of many subsequent developments can be perceived—there is some search for the causes of backwardness, a recognition of the fact that a child may be backward in one subject and not in another, a realisation that that backwardness is linked with promotion problems, and a glimmering of the truth in respect to the needs of special classes (Winterbourn, 1944: 28-9).

The promise of meeting the needs of such children within the ordinary day-school had been reported by Hogben, the Inspector-General of Schools, following his study tour to Europe in 1907 (Education Department, 1908). This was realised ten years later. Meanwhile, the residential school was still the preferred mode, and this period saw the establishment of places for the deaf, the blind, and the backward added to those for the delinquent.

Special Schools

As their name implies, special schools were an invention to cater for exceptional children. Within the Department of Education Head Office, the original Industrial Schools section was expanded to become the Industrial and Special Schools Section, with a designated *officer-in-charge*. This was the direct forerunner of the Child Welfare Branch, and that administrative convenience helps to explain the later role of Child Welfare in institutional provisions. That in turn helps to explain how during this period children were transferred between industrial schools, reformatories and special schools by internal classification, hailed as an advance on the original procedure of

committal to and residence in a designated industrial school. During this period, three special schools (listed below) were opened and property was purchased for the development of more.

School for Deaf, Sumner. A New Zealand survey of the deaf in 1878 showed a total of fifty-seven people, thirty of whom were under fifteen years of age. Prior to that year, a few individual youths of intellectual promise were supported by public subscription and political patronage to attend the Victorian Deaf and Dumb Institution in Melbourne, Australia, New Zealand's nearest school (Allen, 1980: 9). A former Supertintendent of Canterbury Province, William Rolleston, continued his lobbying for the education of the deaf when he took his seat in Parliament, and at one stage suggested that a school could be attached to the Burnham Industrial School. The principle of the government providing a school was agreed to in 1878, and the following year the Dutchman Gerrit Van Asch was appointed director of the first school for the deaf at the Christchurch seaside suburb of Sumner.

> The school that Van Asch established in Christchurch in March 1880 was the first school for the hearing-handicapped in the British Commonwealth and probably was the first in the world to have been established and maintained by a government.
>
> Education of the hearing-handicapped became compulsory in 1902 and Van Asch retired in 1906, having achieved recognition from educational authorities for developing a very high standard of work (Parsons, 1972: 101).

A comprehensive centennial history of the school by A. B. Allen was published in 1980, the same year that it was renamed Van Asch College after its founder-director.

School for the Blind. The Minister of Education reported to Parliament in 1890 that:

> The number of blind children is still, happily, too small to justify the establishment of a school in New Zealand for their special instruction. All cases brought under the notice of the Government receive attention

> from the Colonial Secretary's Department, which now wholly or partly maintains thirteen pupils in the asylums of Australia—ten in Melbourne and three in Sydney (AJHR, 1890, E.1: xiii).

As with other forms of special education, education of the blind was somewhat of an embarrassment to a government stretched for resources but wishing to be seen to be taking its educational responsibilities seriously. In the background, a voluntary organisation called the Jubilee Institute for the Blind (to honour Queen Victoria) had been pressing for the establishment of a school in New Zealand. By agreement with the government, an arrangement was made whereby the institute would establish and have control of a residential school, and the state would meet the cost of tuition. The school opened in Auckland in 1891 with a roll of fifteen pupils, its yearly minimum for about twenty years. It remained the only provision for the blind and visually handicapped until 1949, when *sight-saving* classes attached to state schools were begun in Christchurch and Wellington, followed by similar classes at Dunedin and Auckland. From experiments begun in 1962 to integrate visually impaired children into regular classes, that policy has now become standard practice. In 1964, a new residential and day school, Homai College, Auckland, was opened as a joint operation of the Department of Education and the Royal New Zealand Foundation for the Blind, as the Jubilee Institute had then become known (Havill, 1972: 87). The Foundation's charter, and its relationship to the state, is set out in an Act of Parliament (SNZ, 1963: 26).

Otekaike Special School for Backward Boys. An amendment to the *Education Act* in 1907 provided for the compulsory education of educationally sub-normal children. Children were defined as feeble-minded if they were unable to benefit from attendance at a state school, but were capable of learning under special conditions. The founding of the first such school was recorded by Beck, then a clerk in the Industrial and Special Schools Section.

> It so happened that the Campbell Estate at Duntroon [inland from Oamaru, in the Waitaki Basin] had been taken over by the Government and cut up for closer settlement. All had been disposed of except the homestead block, consisting of some 150 acres of land, and the

> imposing homestead—a building of considerable beauty. This property was offered to, and accepted, by the Education Dept. for the purposes of a special school for backward children. The position of principal was widely advertised, and from the numerous applications received, that of Mr George Benstead, from England, was finally accepted, on the recommendation of Dr Shuttleworth, the eminent specialist on mental retardation. His recommendation was supported by Mr George Hogben, who at the time happened to be visitng England. Mrs Benstead was appointed matron, so that their position was a joint one. On arrival in N.Z. the Bensteads took up residence at Otekaike, acting as liaison officers between the Education Dept. and Public Works during the building operations. The homestead itself was reserved for mainly administrative purposes, while an extensive programme catered for inmates, staff, training and recreational facilities. At the same time the principal was furnished with a lengthy list of proposed entrants, whom he visited personally, and on whom he reported, favourably or adversely, as he judged fit. In all cases, his recommendation was accepted, but it was some two years or more before any admissions could take place (Beck, 1950: 4).

At their inception, the special schools had some congruence with the industrial schools system, reinforced by the Department of Education's decision to deal with them in the same administrative section. The School for Deaf, Sumner, developed unmistakably into an educational institution, while Otekaike Special School had more affinity with the industrial schools. Strictly speaking, the Jubilee Institute for the Blind was never a special school under the control of the Department of Education, but the Industrial and Special Schools Section serviced its needs under the joint venture. The founding of the Jubilee Institute is a good example of the strategy followed by other societies, forcing the hand of the state by taking initiatives to which the state must later respond. A further complication in the area of children with special disabilities was that of classification; in the case of the Jubilee Institute, it also received grants and assistance from the Hospitals and Charitable Aid vote, thus beginning issues of demarcation between health, education and welfare which would favour some agencies and their child clients. Aligned to the classification of the schools and agencies is the question of the assignment of children and the way in which the three allied systems set up rules and traditions about the type of clientele they thought they should serve.

HEALTH

On average, the health status of New Zealand children was not high during this period, although it was still for the future to reflect how poor it probably was. Infant mortality rates were high but beginning to decline. At the beginning of this period, medicine and environmental health knowledge and services were poorly deployed, and the move to central government did little initially to promote the health of children. The turn of the century heralded major developments in organisations for child health in both the state and non-state sectors, which were to improve the life-chances of children and have far-reaching socialisation effects.

State Provision For Child Health

The Central Board of Health. The re-organization of government led to the new *Public Health Act, 1876*, which translated the former provincial boards of health into local boards and created a fresh Central Board of Health for the whole colony. Its period of operation has been portrayed in this litany of defaults as one of the low spots of New Zealand's public health history.

> During the 24 years of its existence the Central Board of Health, by any standard, failed dismally to fulfil the task for which its was established. . . . The Act provided that officers of the Board could be appointed, but no such officers were ever appointed. . . . During the whole period of its existence the central Board was ignorant of, or indifferent to, the inadequacy of the public health law. . . . Admittedly public health was very much in its infancy in 1876 when the Central Board was set up, but great advances in this field were made during the ensuring 25 years. . . . [it] remained indifferent to these great advances, and on the evidence of its own minute book, it never on a single occasion sought or received any advice from any competent medical practitioner, nor did it ever take the initiative in any public health activity (Maclean, 1964: 119-20).

It was superseded in 1900 by the creation of a Department of Public Health.

Local Boards of Health. Port quarantine and vaccination against smallpox continued to be a primary task for local boards of health and children were still subject to compulsory vaccination carried out by the public vaccinator. It was expected that local boards would also take responsibility for environmental health, particularly, sewerage and drainage. In his review of local boards as instruments of public health, Maclean (1964) formed a poor opinion of their efficacy, with Christchurch foremost amongst the exceptions. To support that conclusion, he quotes the Colonial Secretary, who,

> . . . when introducing the Public Health Bill in 1900, has some justification for saying that "in any reform of the health laws it ought to be one of the first essentials that it should remove from the local public bodies the duty now devolving upon them which is never, or hardly ever, carried out" (McLean, 1964: 151).

The failure of the local boards is attributable to their reluctance, and their inability, to raise adequate funding from the rates. Most had no professional employees, and when doctors were hired, they were extremely parsimonious with their payments. Even the progressive Christchurch board offered a salary of £25 per annum less than paid to its non-medical inspector (McLean, 1964: 131).

The Hospitals, Asylums and Charitable Institutions Department. One of the longest established central government organs, this department operated as a section within the Colonial Secretary's Office for over sixty years until its amalgamation with the Department of Public Health in 1909. The Department had a close connection with the welfare of children through its statutory oversight of the charitable aid vote and the work of regional charitable aid boards. Its empowering legislation, *The Hospitals and Charitable Institutions Act, 1885*, set out procedures for the administration of hospitals and their associated charitable aid boards. The following year the principal act was amended to make clear that destitute children committed to industrial schools were to be a charge upon the charitable aid board where the child had

settlement (s.3). Moreover, under that amendment, s.4 allowed managers of children's institutions to be appointed guardian of any orphan children in care, or guardian of any residents with one parent living, fragmenting further any control over the welfare of children in substitute care. Arrangements for charitable aid had never enjoyed a societal consensus and, as this criticism shows, the legislation added nothing towards a solution.

> Confusion and conflict were built into the 1885 Act. Since one of its main aims was to decentralize the administration of charitable aid, local boards were set up to administer hospitals and distribute charitable relief. In some cases the boundaries of hospitals and of charitable aid districts coincided and a single board administered both functions; in others hospitals and charitable aid authorities were kept separate and a 'United Districts Charitable Aid Board' would distribute relief. Superimposed on these bodies were the 'separate institutions' funded partly—in some cases almost wholly—from local rates and government subsidies but administered by independent trusts. The anomaly created here became one of the major points of tension within the structure, especially when these separate institutions concerned themselves with outdoor relief in the form of rent, rations and cash payments— always a controversial operation (Tennant, 1979: 34).

That controversy was fueled by the beliefs and interventions of the Department's officials. For most of the period under review, this department was under the control of one man, Dr Duncan MacGregor, whose philosophy and actions expressed the epitome of nineteenth-century anti-collectivism.

MacGregor, Grace Neill and the Poor Law ideal. Duncan MacGregor is of interest here, not only for the influence which his welfare philosophy may have had on policy makers, but also because he was an official with a direct responsibility for the welfare of children. MacGregor was appointed Inspector-General of Hospitals in 1886, and held that position until his death in 1906. Formerly a Professor of Mental Science at the University of Otago, and then medical officer at the Otago Lunatic Ayslum, he had before his appointment begun to form strong views on issues of poverty and social policy.

> Conversant though he was with the welfare systems of a number of countries, it was the New Poor Law and the precepts of the Charity

> Organisation Society to which MacGregor continually returned. Entirely sympathetic with the English Poor Law's struggle against 'the strong heresy of unscientific and sympathetic human nature' , (*footnote*: AJHR, 1888, H.9:5) he allowed the principle of less eligibility a firm place in his own value system (Tennant, 1979: 36).

On the matter of his philosophy, the annual reports which MacGregor submitted through his Minister to Parliament are idiosyncratic and revealing documents. They stand out from others of their kind by their discursiveness and unabashed polemics. In the report for 1888, a typical example, he quoted at length from the report of the English Poor Law Commission, set up in 1832, on the evils of the outdoor relief system and, together with Biblical quotations, set out his belief that:

> All our social problems—charity, land-nationalisation, sanitation, Protection, education come to nothing more than this: How far is it safe and salutary to suspend the former in favour of the latter—i.e., to be good-natured at the expense of justice? Our circumstances have stimulated our good-nature to an unnatural degree, and we are now in the midst of the reaction. We are beginning to find that we cannot shelter our weakly plants from the winds of selfishness by any hedge that does not induce the still more deadly blight: nay, more, finding the hedge inefficient, must we not pray for the abolition of the wind itself, and demand prohibition of all temptation, because we are too weak to stand it? (AJHR, 1888, H.9:8).

In that same report, MacGregor went on to propose his own typology for classification of the deserving and the undeserving and his remedies for each class:

> 1. We must assume that in a civilised community no one must be allowed to starve, however degraded, improvident, or vicious he may be. The state must, without regard to desert, provide bare subsistence and no more, under a rigid workhouse test, whose principle must be that no State pauper can be better treated than the poorest of the people who are taxed to support him.
> 2. The following classes of cases ought to receive relief that is based on a thorough knowledge of their circumstances, and is adequate: Old people who, through no fault of their own, have become objects of charity, and have no friends; widows with young children, each case of which must be treated on its own merits under the kindly eye of a judicious and discriminating visitor; cases of temporary lack of

> employment or sickness, and people who are convalescents. All these should be taken in hand by a Charity Organization Society in each of our centres.
> 3. The third class contains all those where the poverty and consequent suffering of innocent wives and children arises from immorality and misconduct on the part of the breadwinner; and the question is, shall we permit the innocent to suffer with the guilty? . . . These and all similar cases require the most constant and vigilant oversight during the time they are in receipt of aid, and nothing but a voluntary organization of charitable persons can do any good in dealing with them.
> For the first class the State must provide in each centre, or near it, a workhouse, managed under the most stringent provisions. For the second and third classes what is needed is a Charity Organization Society that shall bring to a focus all the existing benevolent agencies in our large towns, so as to provide against overlapping (AJHR, 1888, H.9: 8).

This was the theme which MacGregor promoted for twenty years and which guided the execution of his official functions. It has already been shown in the section on boarding-out in this chapter how MacGregor thought charitable aid monies ought to be expended on children. While he was not opposed to foster care, he shared that supreme faith of the first English Poor Law Commission, that with good administration and "with an adequate supply of eternal vigilance" (AJHR, 1896, H.22: 2) the poor, and justice, would be served. In her review of MacGregor's contribution to social policy during this period, Tennant (1979) suggested that he was probably less successful in instituting extensive policy initiatives than either of his contemporary permanent heads, Hogben of Education, or Tregear of Labour. She went on to say that:

> The importance of his inspectorate should not be underestimated however, if only to remind us that altruism and progressivism were not necessarily the only inputs into the nascent welfare state. MacGregor's philosophies were echoed in the qualifying clauses of the Old Age Pensions scheme. . . . further research might show their affinity to a much wider pattern of paternalism and disciplinary activity during this period (1979: 40).

Mrs Grace Neill, whose opinions about the boarding out system have also been given earlier, was in 1895 transferred from the Department of Labour at MacGregor's request to be his assistant. As well as claiming that a woman

would be better able to ferret-out undeserving cases for outdoor relief, MacGregor thought that he should have the help of an experienced woman in investigating charges of sexual exploitation, or blackmail as he called it, made by female relief applicants against male relieving officers (Tennant, 1978: 7). Whatever contributions she may have made in other fields to the humane governing of children, it is hard to find any difference between Mrs Neill's philosophy and that of the department's Inspector-General. Her reports follow the MacGregor line on the matter of the abuses of outdoor relief to the degree that it is hard to distinguish authorship of departmental reports.

While employed in the department, Mrs Neill was responsible for two major innovations that were significant contributions to child health. Following her original training, she was the originator of midwifery training and registration in New Zealand. As a further development, and in the face of considerable opposition, Mrs Neill set up the first state maternity and midwifery training centre, the St Helens hospitals. In these tasks she was assisted by the patronage of Prime Minister Seddon (Tennant, 1978: 11-5).

The Department of Public Health. The dismal performance of local health boards was a principal reason why government moved to establish a central authority in Wellington in 1900. For the first twenty years of its existence, the resources of the Department of Public Health were spread thinly, but the vigorous attention it gave to quarantine, the spread of plague and smallpox, and general sanitary conditions were undoubtedly factors in the slowly improving condition of child health. In 1909, the Asylums, Hospitals and Charitable Aid Department—formerly ruled by McGregor—was amalgamated with Public Health. Duties that had devolved on charitable aid boards were then transferred to hospital boards, and a decline of interest in non-medical child welfare is evident from that time. Although officially still responsible for certain types of children's institutions, the creation of visiting nurses and the nascent child welfare system of Education allowed Public Health to withdraw from those areas. A School Medical Service was begun in 1912, and was for nine years under the control of the Department of Education before being transferred to

Health.

Plunket and Truby King

Frederic Truby King was born of middle-class parents in 1858 at Taranaki, trained in medicine at Edinburgh, and after a short term as medical superintendent of Wellington Hospital, in 1889 was appointed medical superintendent of Seacliff Mental Hospital, near Dunedin. He held that post, together with a lectureship in mental diseases at the University of Otago, until in 1921 he moved to the position of Director of Child Welfare, Department of Health Head Office, Wellington. King was for a time Acting Inspector-General of Mental Hospitals before being appointed to combine the Inspectorate with the post of Director of Child Health. He was knighted in 1924, retired from government service in 1927 and died at Wellington in 1937 (McLintock, 1966: 221).[5] A more personal characterisation of King is given in Parry (1982: 27-35). A man of wide interests, King is best remembered as the initiator of the Society for Promoting the Health of Women and Children, formed at Dunedin in 1907.[6] It soon became known as the Plunket Society after its patron, Lady Plunket, wife of the Governor-General. The Plunket Society grew into an institution and a way of life. It set up clinics for training women in mothercraft—the title of one of King's manuals; it trained infant health visitors

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5 Olssen (1981b: 16), Koopman-Boyden and Scott (1984: 116) and Sinclair (1986: 223), all write of King as having been appointed to the Child Welfare directorate without specifying that it was in the Department of Health, and a newly-created and short-lived post. It had no connection with the Child Welfare Branch, Department of Education, contrary to the impression given in Koopman-Boyden and Scott, who follow immediately with references to the *Child Welfare Act, 1925*, which statutorily empowered the Branch and its head, the Superintendent of Child Welfare.

6 Olssen, the historian who rehabilitated King's influence, expressed some scorn that general histories of New Zealand made little or no reference to either King or the Plunket Society (1981b: 3). One of those authors whom Olssen chides for dereliction in an early work, made good by devoting three pages of his most recent book to King and the Society, in which he opines that "He was arguably the most influential man in Pakeha society" (Sinclair, 1986: 223).

who routinely called at the homes of neonates and who conducted well-baby clinics for older infants; it opened hospitals for sick infants and the training of nursery nurses, known as Karitane Nurses, after the location of the first Plunket hospital; it published guides and manuals on child rearing some of which were taken up and distributed by the government. Overall, it had within thirty years become an accepted and commonplace facet of family life. More than anything else, it helped to reduce infant mortality significantly (Parry, 1982).

The other side to the influence of King and the Plunket Society was the suggestion that their child-rearing propaganda and ubiquitous services formed a distinct ideology, embodying middle-class social values and dictating patterns of social relations. King is also credited with having democratised medicine. Such claims have opened debate on the degree to which this ideology affected national character and institutions (Olssen, 1981a; 1981b).

CONCLUSION

The governing of children showed a markedly protectionist and interventionist bent from 1880 as the state moved to limit the rights of parents and other adults, and to assume more direct responsibility for the care and control of the disadvantaged. Parliamentary activity concerned with children, commissions of enquiry and legislation, proceeded at a rate not to be equalled again for nearly a century. While the formation of central government in 1876 may seem to be the logical time from which to measure such changes, most of the child welfare initiatives were made by the Department of Education which in 1880 took control of industrial schools from the Justice Department. At the same time, the significance for policy on children of the demise of provincial government must not be overlooked. This period saw the birth of the centralised state bureaucracies of welfare, health and education, setting a pattern for policy and its implementation that had long-lasting and potentially conflicting aspects: standardisation against local variety. It cannot be assumed that central control is less desirable than local control or *vice versa,* but the

effect of highly centralised policy making and control must be recognised as a social invention different from other aspects of the infrastructure. These are questions that keep arising in the social services in general, and in child welfare in particular.

The period straddling the new century was the time when the family and the cluster of values associated with it came into their own. The social purity lobby of the 1890s, the temperance movement, the Society for the Protection of Women and Children, the Plunket Society and the like, were expressions of what Olssen and Levesque called the "twin cults of domesticity and true womanhood" (1978: 6-7). City living for the rapidly growing population was being organised with health controls, services and utilities, and home life likewise was being forged into a regulated, middle-class consciousness. For children, determined attempts were made to imbue them with the values of society. They were from 1877 required to attend school, and the schools themselves took on a nationalistic flavour, still aligned to the culture of Britain, but with a strong patriotic overlay. Not only were the mass of pupils themselves now *New Zealanders*, rather than immigrants, but their teachers too were likely to have been born and raised here. Schools reflected the climate of *embourgeoisement* and became for a time a battleground between competing varieties of opinion on the values and attitudes which were thought essential to build character (McGeorge, 1986).

Overall, the period had been described as one of consolidation (Graham, 1981: 113) and, in the case of children's policy, it was a consolidation that comprised innovation, experimentation, expansion and control. Through legislation and administrative growth, routine ways to buttress the family and compensate for the risks of poverty and fragmentation were first introduced. As a move away from sole reliance on the localised charitable aid boards, state-provided income maintenance supports were introduced by the Liberal government early in the new century. The first family allowance in 1911, paid as an dependants' allowance to those over sixty years, had parallels with provisions in the widow's pension inaugurated that year. Children attracted an

allowance which could be continued as an orphan's benefit if the mother died. Considerations of protectionism were evident also in changes to guardianship and custody laws, and the long-standing rights of fathers to exclusive possession were whittled away in a series of property, domestic proceedings and guardianship legislation. Midwifery training began a move to protect unborn children and the creation of state maternity hospitals foreshadowed the day when it would be illegal for mothers to give birth other than in a registered maternity hospital. The economic recession of the 1880s, and the poverty that resulted, created widespread demand for the substitute care of children. Ironically, those same conditions created a pool of families who were willing to care for children under the new state incentives, as a form of income supplement and extra, unpaid labour.

In the state sector, the undifferentiated industrial school model of dealing with unwanted children gave way to a whole new range of provisions. Legal adoption was formalised and, by the end of the period, the rudimentary system for invigilating it started to take on a bureaucratic and specialised slant. Population numbers were then great enough to consider special education for exceptional children with the result that progressive methods for the deaf, the blind, and backward children were introduced in the form of residential special schools. Indeed, in keeping with developments in Britain, state and non-state residential institutions for children flourished. Similarly, the revolutionary shift from indoor relief to planned and systematic fostering of children in state care was a major innovation that required experimentation with ways and means, with the result that state-employed social workers made their first appearance in the child care area. Once established, those agencies and their workers began to accrete other tasks—some official and some expedient. As well as entering in a small way the business of providing services, the embryonic child welfare agency—the Industrial and Special Schools Branch—also took on the task of inspecting and regulating the non-state child welfare services.

Events showed that sometimes children had to be protected from those who purported to rescue them. The baby-farm scandals engendered solid

public support for the state to license, inspect and regulate situations where vulnerable infants could not speak up for themselves. Revelation of the excesses of the regimes of private industrial schools likewise spurred the state to take over the policing of the treatment of children by established charitable organizations. The controversy over religious education not unexpectedly spilt over into the child care world when it became apparent that rescuing children could potentially increase church adherants. Whatever the likelihood of that getting out of hand, denominational squabbles were politically uncomfortable for government, so that moves to limit the amount of state subsidies by curtailing the ambitions of church-run industrial schools were inevitable.

Extensive experimentation occurred in methods of dealing with juvenile offenders. After a slow start, the lobby to keep children and young people out of prison, whether in transit or otherwise, showed considerable effect by the end of the period. Efforts to create separate jurisdictions for juvenile offenders were haphazard and opinions were divided on these claims to special protection. Despite that climate of indifference, a few individuals were committed to the cause of diverting young persons from the contaminating effects of adult jurisdictions and prisons, and they used their authority to experiment with procedures. A form of juvenile probation was successfully started, first as informal collaboration between a few magistrates and officers responsible for industrial schools policy, and later formalised as a common method of dealing with juvenile offenders.

Categorisation of the new rights that were established for children hinged on the overwhelming influence of protectionism. The implicit right of protection became the explicit right of freedom from abuse. Hunger, ill-health, punishment, and scanty clothing were not unusual conditions for children in an era of widespread hardship, but even so the community was not prepared to tolerate them in excess, especially when visited upon children who had been removed from their homes for those reasons in the first place. The line between building character and destroying the body had to be found, and in that search standards of acceptable practices were established. Regulations and state

intervention were the instruments that would protect those explicit new rights of children. Equally, exposure to moral degradation remained cause for serious alarm, and a type of rescue which combined both safety and a good upbringing was promised in the boarding-out scheme.

From circumstances in which they were free to follow their parents and families, all New Zealand children became, over a comparatively short period of time, clients of the state. As well as compulsory schooling, developments in health and welfare showed the fashion in which children's lives would become increasingly hedged around. An impression of considerable unity in policy was given by the consolidation of child protection legislation into the *Infants Act, 1908.* However, in reality, both the legislation and the administrative machinery for carrying out its intent were fragmented and tentative. Children were clearly a vital resource, and for the state to fulfill adequately the protective and socialisation functions then being expected of it, a unified policy and standardised services were imperative. People with that vision were soon to have the chance to influence provisions for children in that direction.

CHAPTER VI

FROM PROTECTED PERSON TO SOCIAL CAPITAL, 1914—1944

This chapter examines a period in which state provision for children burgeoned. This built upon the protectionist practice described in the previous chapter and added a new policy approach to children and young persons as human resources worthy of investment for the value they may return as productive adults. In this view, children become *social capital.* The period covers New Zealand's involvement in two World Wars and has within it three distinct sub-periods: 1914 to 1924, when the *social capital* ethos began to make itself evident in new practices, especially the idea of *social hygiene*; 1925 to 1935, characterised by the practices of the new bureaucracy for the governing of children set up by the *Child Welfare Act, 1925*, and the continued growth of non-state child health and welfare agencies; 1936 to 1944, in which children became equal beneficiaries under the welfare reconstruction implemented by the first Labour Government.

The notion of children as social capital has been considered by two New Zealand economists. Firstly, W. B. Sutch, in the book that was primarily his submission to the Royal Commission of Inquiry into Social Security, emphasised the future orientation which in his view all societies ought to take towards their young.

> If children are a family investment or, more importantly, a social investment, it becomes necessary to examine whether this investment is adequate and how it is paid for and, in doing this, to see whether there is inequity in the burden of payment for that investment and whether such inequity deprives the children or society of developing the full potentiality of the individual. . . The word 'investment' has been used not only to include expenditure on a human asset which will provide the goods and services required for the future, but in the wider sense that expenditure on children and the attention paid to them by society through and also outside the family should promote a better people and

> a better society, whether or not the criterion of goodness can be calculated in money terms (Sutch, 1971: 80-1).

Secondly, a more argumentative approach was taken by Easton who calculated the total investment in children to be a figure about one quarter of the gross national product (Easton, 1980: 79). His analysis included this description of children as economic agents.

> There is a tendency to classify only those activities which involve some sort of monetary transaction as 'economic'. Thus a child who purchases and eats food is an economic agent. But there is a more fundamental way in which a child is an economic agent, even though there is no specific monetary transaction. The activity of growing up to the status of an adult (who can earn in the labour sense) is also an economic activity, even though there is no monetary transaction directly associated with the growth of this human potential. Such economic activities are analogous to the investment programme in say, a hydroelectricity scheme, which over a sixteen year period enables the production of future output of electricity. This investment involves the society in providing resources for the construction of the installation, and thereby forgoing current consumption. Similarly we invest in children. The distinction between investing in physical assets and in children is not that the resulting human capital is intangible. Firms may invest in activities which give tangible outcomes such as monopoly, patents and marker images. What distinguishes these intangibles from the value of a child is that the child cannot be bought and sold in the market, so that its economic value cannot be directly converted into a monetary value. The conversion occurs only when the child grows up to adulthood and earns (Easton, 1980: 78-9).

While recognising the instrumental nature of the dates set as boundaries for the periodization used in this inquiry, the year starting this period was marked by two events significant for children. Of most importance was the entry of New Zealand into World War One and the departure of expeditionary forces abroad. Social values were considerably modified as a result and the social fabric, especially family life, temporarily disrupted. But it was the retrospective consideration of the inability easily to raise an army of fit soldiers which gave the greatest impetus to the social hygiene movement's interest in children. The connection between nurturance in childhood and health and productivity in adulthood was not only established as a scientific truism but also propagated

as a political banner goal, as this quotation from Beck indicates:

> In view of the drain on the resources of the Dominion during the period of the war, and of the need now to increase our productive powers, it is essential that the country should protect and foster its children, that it should utilize the most effective means of conserving the health of the young of the nation, and should also train them that they will be strong and vigorous to carry on not only the vocations of peace but also the practice of war if that be required. In fact, it is difficult to conceive any more important function of the State at the present period than the care of children who are the future citizens of the State (AJHR, 1920, E.4: 13).

The second event, trivial perhaps except to the student of children's rights, was the 1915 appointment as Officer in Charge, Special Schools Branch, Department of Education, of the man who drafted the preceding extract, and whose influence was critical in shaping services governing children. The work of John Beck is detailed in this chapter.

THE SOCIAL CONTEXT

Beginning this period with the onset of one World War and ending with the finish of the second, adds some artificiality to the rate of change described. Nevertheless, it was the era when patterns laid down in the 1890's helped to shape a recognisable " new society". In Olssen's words:

> The adults of the 1920s, born in the nineteenth century, had seen their world transformed. New Zealand was moving along the continuum from pre-industrial to industrial, from pre-modern to modern; a new society was emerging, characterised by towns and cities, bureaucarcy, specialization and organization. The social structure became more complex, the division of labour more intricate, the distinction between rural and urban more obvious. Although the changes occurred at different speeds in different areas, they converged to integrate the fragmented regions and localities of the 1870s into modern New Zealand by the end of the 1920s (Olssen, 1981a: 250)

The growth of organization and bureaucracies that Olssen observes

included those governing children, broadened in scope and function and narrowed in structure by increased centralization. Voluntary societies with modern, formal structure and specific goals flourished, supplementing more informal arrangements for meeting needs carried out through lodges, friendly societies and the churches. These features are examined in the sections on welfare, education and health. Olssen writes also of a demographic revolution in the Pakeha population which underlaid that transformation. Gender ratios converged until they were temporarily equal in 1916, as the immigration of single males, characteristic of imperialism, ceased to be a source of population growth. Increased longevity and smaller family sizes caused the age distribution to become more regularly pyramidal, and children as a stratum continued the steady decline as a proportion of the total population. At the census in 1916, minors accounted for approximately 43% and at the 1945 census just over 35% of the population. These changes are summed up as follows:

> The shift from a pioneer demographic structure to a more balanced age-sex structure, the fall in the rates of mortality and fertility, the increased popularity of marriage, and the greater stability of the family provided a necessary although not always sufficient cause for accelerated modernization (Olssen, 1981a: 252).

The family, idealised by the "twin cults of domesticity and True Womanhood" (Olssen and Levesque,1978), was the cornerstone for the effort to transform a frontier society into respectability. Powerful and persuasive movements grew under the banners of temperance, morality, child-saving, and home-making. Women were foremost in these missions (Tennant, 1976).

The period is notable for a number of crises which directly and heavily fell on children. Early in the period, the officially declared epidemic of poliomyelitis in 1916 was the first of six major epidemics up to 1948, with most fatalities occuring in children. That was followed by the influenza pandemic of 1918 which was relatively kinder to children, and literally decimated their parents, killing twice as many men as women. That event, coupled with the casualties of

World War One, resulted in many fatherless families, and others where the father was incapacitated. The Great Depression, hitting New Zealand's already depressed economy most severely after the Wall Street "crash" of 1929, was a period of deprivation that defeated and embittered a whole generation, and incised a collective psychic wound on the next.

> The Depression is part of the folklore of my childhood, a grey and ill-defined monster, an unspeakable disaster, and yet a triumphant major chord. It cast a long shadow, a blight on everything it touched, but it was never recounted in detail. Memories of wasted years, hugged tight to the self and never disgorged—just *The Depression.* My generation, how could we know. You wouldn't understand it unless you saw it, and if you saw it you wouldn't understand it. It was only something which was, and had been experienced, the final word in quarrels: "You'd never think that way if you'd known what I knew in The Depression." All that was left to us was the crumbs of statistics, the gnawed bones of the Barmecide feast, relics of the saints retailed by historians to turn a moral (and a penny) for the present age.
>
> But even from these faint echoes the magnitude of the disaster emerges clearly enough for those with eyes to see and a brain to fancy (Simpson, 1974: 6).

From that prolonged stress and dislocation, reconstruction was well under way when New Zealand joined itself to the war in Europe in 1939. Men just freed from the relief camps were now claimed by the military, and women were conscripted into war work. Only married women with dependent children under sixteen years of age were exempt from job placement, or "manpowering", directed by the Manpower Committee of the Organisation for National Security (Ebbett, 1984: 47-9). Labour was so much in demand that children were no disability to women seeking work. Combined with ease of access to the work force, hardships for mothers alone of finding and maintaining a dwelling coerced some into a peripatetic existence. Many wartime children travelled with their working mothers up and down the country, from city to farm, from relatives to boarding house, from school to school. At harvest time, villages of women and young children from near and far were assembled for the season (OHMF).

Many institutions for children and youth were commandeered for war

purposes. Amongst these, the School for Deaf at Sumner was taken over and the residents dispersed. By such expediency, Auckland, the North Island's largest centre of population, got its own school (Allen, 1981: 74). Even the "hard core" of delinquents were caught up in wartime fervour. The Boys' Training Centre, Weraroa, was vacated for the Air Force and the residents transferred to a nearby government farm where they helped to build a new campus. The manager of the time recalled that the sense of purpose and adventure created an spirit of involvement in which no youth absconded for a record eighteen months (Peek, 1969: 15). Many of those same young men were drafted directly into the armed forces (OHMF).

While these crises ran their course they were destructive and divisive, but the assaults of disease, poverty and foreign aggressors did have a unifying effect. Opinions and beliefs about the causes and their remedies were not unitary, but people came together on the desire for action against common enemies. As Keith Sinclair writes of the Great War,

> In New Zealand, which had as recently as 1912-13 been socially divided by strikes and violent anti-strike action, the war was cohesive. The Prime Minister, W. F. Massey, said that there was scarcely a family not represented at the front. In country districts and in suburbs each party of soldiers was farewelled at gatherings in the local halls. Returning men were driven in motor processions through streets lined with cheering crowds (Sinclair,1986: 165-6).

Resistance to governmental growth and power melts under the nationalistic fervour of war or the grim spectre of rampant disease. Just as the populace rallied around organizations for direct action, so too the state machine expanded and modernised to become an efficient instrument in the age of emergencies.

Legal Capacity

The legal category of "young person" which had been found in various statutes of the nineteenth century disappeared with the *Child Welfare Act, 1925.*

Initially, all persons under sixteen were defined as children, for the purposes of that Act, until the *Child Welfare Amendment Act, 1927*, raised that by one year. It was around this time that a form of case-law principle was adopted to deal with the threshold age between dependence and independence, in the matter of young persons living away from home. The nature of colonial life, and the demand for seasonal labour, had permitted working class adolescent boys to strike out on their own as young as twelve or thirteen years. Provided they stayed clear of the harsh vagrancy laws and criminal offending, they were not out of place in the male labour force travelling the rural districts (OHMF).

Increased urbanization brought problems of a different nature, and of a different type between boys and girls, when there was a dispute over parental rights to enforce the young person to stay in the family circle. Where no offence was apparent, the police were reluctant to become involved in what they considered domestic disputes and the issue was invariably referred to the Child Welfare Branch. By 1932, it had determined a policy of non-interference for those over sixteen, when the Superintendent wrote to CWOs " I think it may be taken for granted that no court would order the return home of a boy or girl of 16 years of age who was self-supporting and living decently" (NANZ, CW. 40/2/14). That has remained the position since.

The Branch did, however respond to its supposed function of the enforcement of moral standards, because the question of "living decently" was more problematic in the case of girls who were of an age to consent to sexual intercourse, but still legal minors. Parents could veto marriage but were almost legally powerless to terminate *de facto* relationships contracted by their underage offspring. Where, in any case involving a girl of that critical age between sixteen and seventeen, Child Welfare could be persuaded that a liaison was not in her best interests, complaint action under s.13 of the *Child Welfare Act, 1925*, could be initiated. Seduction and exploitation by older men, particularly married men, were considered sufficient grounds, and even in the late 1960s the authorities were still in rare instances taking court action to seek guardianship of sixteen year old girls thought in need of rescue.

The barrier of illegitimacy for pensionable children of widows was finally removed by the *Pensions Amendment Act, 1936*, giving an indication of the way in which deservingness would gradually become separated from pensions and benefits.

Income Maintenance

Until 1939, families in financial distress could claim on charitable aid boards whose practices in regard to children are noted later in this chapter. Piecemeal adjustments were made to the two central government pensions, the old age pension and the widows' pension, which allowed for dependent children. Payment of the first family allowance began in 1927, and children of male breadwinners were allowed for in the unemployment relief schemes of the depression. There was a widespread liberalising of pension criteria during the term of the first Labour Government, 1935 to 1938. *The Social Security Act, 1938*, which became operative on the first of April, 1939, was a welfare revolution which affected the lives of all children. Health benefits, which followed a little later when the government and the medical profession finally compromised on a scheme, are reviewed in the section on health in this chapter.

Benefit entitlements to 1939. Modifications to the rates and conditions attracted by pensionable children included in widows' pensions were made according to economic and political winds. The changes to the end of 1935 were summarised as follows.

> In 1917 there was an added war bonus of of 2s. 3 1/2d. a week per child. In 1919, with the cost of living still rising, the pension was increased to to 15s. a week (again as suggested by Atkinson in 1882) for widow and child, plus 7s. 6d. for additional children. In 1924 it was increased again to £1 for widow and child, plus 10s. for additional children, with a maximum pension of £4 a week. A liberal gesture was made by allowing the Minister, on recommendation of a magistrate, to grant a pension to a mother of children, not a widow, when the father had died. In 1925 exemption was allowed for a home and the age limit

> of a pensionable child raised to 15 (as suggested by Atkinson in 1882). In 1932 widows' pensions and the maximum payment was cut from 30s. to 25s. a week, and all special exemptions abolished. In October 1935, just before the general election, pensions, maximum payment, and income exemptions were restored to the previous level but special exemptions were not (Sutch, 1966: 159-1).

Widows' pensions were doubled at the end of 1936, and property and income restrictions liberalised. Similar improvements were made in respect of old age pensioners, including their dependent children. Until 1926, children had figured in benefit entitlements mainly as liabilities attracting additional payment. The *Family Allowances Act, 1926*, said to be the first in the world of its type, introduced the principle ". . . of the State bearing to some extent the responsibility for the well-being of families of those who were in poor circumstances" (Social Security Department, 1950: 29). The allowance was means tested and non-contributory, providing the sum of 2s. a week for the third and subsequent child in each family, up to the age of fifteen, with a family income limit of £4 a week. It was paid to mothers, with the expectation that it be spent on the maintenance and education of their children. However, only the deserving poor were helped, as illegitimate, alien and Asian children resident in New Zealand were specifically excluded from entitlement, and the allowance could be denied for defects of moral character. From 1930 to 1936 the family income limit was reduced to £3 5s. a week, to save money at the expense of those fortunate enough to be in employment.

The Family Allowances Bill did not have an smooth passage through its legislative stages. Its second reading in the Lower House took from 4.30pm to 1.15am the following morning and amounted to forty-seven printed pages of debate (NZPD,1926, 210: 587-633). In common with other welfare legislation of the period, it portrayed the archetypical ideological clash, lining up for its conservative opponents the Poor Law virtues of work, independence, family responsibility and Godliness, against the perils of state charity and disruption of the labour market. For its Liberal-Labour supporters, it was a pragmatic response to the facts of poverty and malnutrition in children.

Children became a calculable liability in the unemployment relief schemes hastily put together in 1930 and administered by the Unemployment Board. To the end, that Board kept to a policy of no relief without work. An overlap of functions, and the limitations of hospital and charitable aid boards, led to a conference in 1932 which determined areas of responsibility. All registered males were to be examined by the hospitals and those classified as fit for work came under the control of the Unemployment Board. The unfit, or those fit for light work only in the towns, were diverted to the local charitable aid boards.

> The rates of sustenance and relief varied between the main towns, secondary towns, smaller centres and rural areas, different scales being adopted to meet different conditions. Cash assistance was not always granted as there was a system of rationed work and benefits in kind. Married men received relief according to the number of children (Social Security Department, 1950: 31).

Women, with or without dependants, fared badly. Although working women were required to contribute to the Unemployment Fund set up in 1930, they were not eligible for assistance from the Unemployment Board.

In summary, state assistance directed to poor families for the support of children became established as a principle over this period. The amounts were inadequate and the provisions were fragmentary, discriminatory and discretionary, the main victims until 1936 being children born out of wedlock.

Social Security. The 1938 Act legislated for all existing pensions to be made mandatory and added some new categories, most notably the unemployment benefit. Payments were financed by a separate tax on income, and annual registration fees. It is not intended to consider the provisions of the *Social Security Act* in detail. Three aspects in relation to children stand out: the mandatory nature of benefits which included dependent children; the extension of family allowances and the end to discrimination; the introduction of the orphans' benefit.

On the first aspect, children could be adjunct beneficiaries as dependants

of any adult in receipt of a Social Security payment. Thus, by extension, the mandatory and universalistic nature of the these new benefits (as pensions were renamed), provided a guaranteed minimum subsistence payment. On the second aspect, it was just a few years before the new, more generous Family, or child, benefit also became universal. The Act doubled the rate to 4s., and raised the age eligible to sixteen. The following year, it was made payable to second and subsequent children of a family, and the next year, 1941, made universal. The third aspect, the orphan's benefit, was quite different from the earlier provision of 1911 for an allowance to be paid to the surviving children of a widow who died while in receipt of a pension. It was a mandatory cash benefit on the same footing as those for adults, and in that sense, the first statutory income maintenance provision for any eligible child in its own right.

THE STATE TAKES HOLD

The residue of the provincial government system left control of the welfare of children largely to the managers of children's institutions, state and non-state. The church social services and their secular off-shoots, such as the Society for the Protection of Women and Children, had by state default grown to be the invigilators of child protection in the community. The state's own tentative moves towards the governing of children and children's agencies had developed in a piecemeal fashion, now involving the police, factory inspectors, health authorities, charitable aid boards, and the Industrial and Special Schools Section of the Department of Education. The hearing of charges against children were handled differently from one court to the other, and their dispositions were similarly varied. At best, the governing of children was un-coordinated and the outcome for children uneven; at worst, in the opinion of one official, it was chaotic (Beck, 1950: 7).

Of central concern was the formation of a supra-authority which could protect children from the capriciousness of agency intervention. Earlier events of the abuse of institutionalised children and inter-denominational rivalry, had

shown that in some cases children needed to be protected from their rescuers if justice was to be even-handed. Moreover, non-state agencies were slow to follow the lead of the state to use boarding-out as the preferred mode of care. With such practices, it became apparent that the remedies applied were less just than the problems they sought to allieviate. The core of the state's authority existed in the consolidated *Infants Act, 1908*, and the *Justices of the Peace Act,1908*. It now required a rationalization of the administrative instruments to ensure a standardized application of the new ideology. How the state took hold of that function is now described.

Child Welfare: The Philosophy and The System

Underlying the thrust to centralization of control was a growing acceptance of the idea of children as victims of their environment and, therefore, deserving of equal treatment. At the heart of that issue was a variation of the "nature versus nuture" debate, illustrated by the attempts to classify children by the moral standing of their parents, which had been a guideline to action for the early "child-savers" (Tennant, 1979: 37). While old attitudes died hard, the child rescue movement had demonstrated that in some of the most unpromising cases children could be re-socialised by removing them from their homes. Environmental manipulation, backed-up the tenets of eugenics and social hygiene, held the promise to make all the poor into respectable, healthy and productive citizens. Moreover, if the criminal propensity of children from the dangerous classes could be diverted, the need to differentiate treatment between the dependent, the delinquent and the exceptional child was diminished. Those distinctions came to an end with the *Child Welfare Act, 1925*, and the official stamp given by publication of this philosophy.

> The view generally accepted by child-welfare authorities in regard to the offending child is that less is to be achieved by punishment than by correction of conditions through the constructive work of the Court in conjunction with the Welfare Officers. As stated in a previous report, the child should be saved by the State, not punished by it (AJHR, 1928, E.4: 2).

It is imperative to emphasise that the 1925 Act introduced few practices that were new. Most of the work on the set up and function of a central authority was foreshadowed in the period 1915 to 1925. In brief, the Act made three important changes: it brought together in a single, central government agency most of the statutory power for the governing of atypical children, it vested that power as controller of services and guardian of committed children in the single role of Superintendent of Child Welfare, and it gave absolute discretion on the treatment of his wards to that Superintendent. Not all ambitions were realised at once. The non-state agencies, particularly the churches, were a powerful lobby ready to resist state encroachment on their traditional areas of social service. They were, as related below, partly won over by being led to design their own controls. Further understanding of the system and its philosophy is revealed through the career of the first Superintendent of Child Welfare.

Life and work of John Beck. John Beck was born in Kirkcudbright, Scotland, in 1883 and came as an infant to New Zealand with his immigrant parents. His father was a foreman in the Railways, a job that meant periodic moves throughout the country. In 1899, at the age of sixteen, Beck left the family home at Balclutha, Southland, to take up a clerical cadetship with the Department of Education, Wellington. Posted to the Industrial and Special Schools Branch, in 1915 he became officer-in-charge on the retirement of R. H. Pope. In 1925, he was sent on an official visit to the USA and Canada to observe developments in child welfare (Department of Education,1927) and on 1 April, 1926, was appointed Superintendent of the new Child Welfare Branch, formed under the authority of the *Child Welfare Act, 1925*. Beck held that position until 1938 when he prematurely retired through ill-health. He died in 1962 at Hamilton (McLintock, 1966; Beck, 1950).

Beck's administration is of interest for the reforms of the system made, and

executor of the scheme which was to unify all existing child welfare provisions, introduce a new administrative pattern, and become the base for all state protection and control over children for half a century (Beagle, 1976; Oliver 1977: 17; Somerville, 1982). From his reports, his memoirs (Beck, 1950), and recollections by others (McDonald, 1979), it is probable that the small scale, specialist tasks of the Special Schools Branch forced him into an autocratic administrative style. He wrote of formulating a overall plan for the state role in child welfare and of his determination to carry it out. In his view, the degree of corporate and ministerial support which he received for his ambitions varied from benevolent and ineffectual interest to frank obstruction. Upon his initial appointment, he was for a time directly accountable to the Director of the Department of Education, who gave him wide latitude and involved him in ministerial discussions on welfare matters. The appointment of an Assistant Director altered the line of command, and with it, the friendly co-operation hitherto existing (Beck,1950: 7-8).

His anecdotes show Beck to have been a shrewd, and at times ruthless, public servant. For example, he found ways to bring outside pressure to bear when thwarted by his Minister on the first proposal for a comprehensive child welfare bill. Beck wrote that:

> From this experience I realised that before the Minister would make any move to place the proposed legislation on the Statute Book, there would have to be sufficient pressure exerted by outside social welfare authorities. Later, on my next visit to Auckland, I found that a Community Welfare Council was in the process of being formed, representatives of every Social Welfare Society being members. Making contact with some of the leading men in the council, I discussed the need for legislation along the lines indicated above, and received an assurance that any proposal I cared to submit would be fully considered, and if approved would be sent on to the Government for action. In due course, the information was supplied, and the Council, with this lead, prepared and circulated a comprehensive document entitled 'The Children's Charter". The Council went to endless trouble in probing and discussing every clause of this Charter, and when it was finally approved, a deputation waited upon the Minister in Wellington, urging the acceptance in toto. Referred by the Minister to the Director [of Education], I was sent for and asked to look over the Charter with a view to bring forward proposals for forthcoming legislation wherever my

> views coincided with those of the Council. In view of my private understanding with the Council, it was a tremendous step forward towards the legislation I had in mind. I felt justified in believing the first step of the battle was won (Beck, 1950: 25)

Despotic use of his authority in staff matters is evident. It seems that Beck's method of dealing with a special school manager whom he deemed inadequate was characteristic; he offered the choice to quit with no questions asked, or to face a tedious bureaucratic investigation (Beck, 1950: 11; McDonald, 1979a). At the same time, he confessed to a cavalier attitude to the controls which limited the exercise of the Branch's functions.

> Sometimes, in order to find a solution, it was necessary to step outside of the limits of what was then regarded as legal expenditure. In all such cases, my viewpoint was what should be done in the best interests of the family, or the individual child, as the case might be. It frequently happened that a mother, worn out with family cares, found it necessary to have a holiday to avoid a breakdown. Sometimes a family was taken into a receiving home for a fortnight or so, when it was impossible to make any other arrangements, and where necessary, a place was found where the mother could have a change, and get a grip of herself (Beck, 1950: 9).

If Beck now appears as a Machiavellian lone crusader obsessed with reform of the system, the full picture that emerges is of kindly man, with a sense of justice refined by aversion to the systemic abuses he saw falling on child victims in courts, industrial and special schools, and in the community. The truth of the matter is that he was largely isolated from professional support and, once in a position to exercise authority, did so reasonably and single-mindedly in the interests of children. As a background to a discussion of those reforms in detail, two features of the Beck era need to be canvassed. These are his beliefs and activities leading up to the 1925 legislation, and the degree to which he was influenced by foreign practices.

The seeds of policy. Beck reported that the first Stoke Industrial School scandal, which occurred just weeks after his appointment as a cadet, awakened his interest ". . . to the vital human problem lying behind the routine office work on which we were engaged. These were lives with which we were

juggling, and the immense importance of each decision dawned upon me" (Beck, 1950: 2). The abuses he observed in the industrial schools and reformatories were a challenge that moulded his belief ". . . that drastic changes in the system were an urgent necessity. And with the realisation grew a mounting ambition that I should be the one chosen to undertake this humanitarian reform" (Beck, 1950: 5). By the time he assumed charge of his section in 1915, he had already determined upon the plan to bring all services, state and non-state, to account to one central command. This was to bring more standardization to the treatment of children in care, and also to humanise the treatment given. He was disgusted by the brutality of the industrial schools and reformatories, although he was realistic enough to understand it as a reflection of societal expectations, provided "thrashings, diet of bread and water, and cell punishment" did not exceed the official regulations. Apart from the physical and emotional climate, Beck sought to alter the conventional career of children coming to notice, by preventive work that would prevent committal or admission to an orphanage, by the routine use of foster care when committal was unavoidable, and by reducing the length of time children spent in institutions. Above all, he wanted to normalise the whole business of child care. Explaining why he had discarded the term "industrial school" in the new code, he thought he was ". . . doing away with the stigma that is at present attached to children who through no fault of their own have been committed to the care of the State" (AJHR, 1920, E.4: 13). By 1920, he had achieved substantial reorganization of the state institutional system, as described in the section below on residential care.

Beck used every opportunity to cajole officials in allied systems to take a child-centred view of procedures and to make practical use of his few officers in the field. In particular, he personally exhorted magistrates to give expression to the intentions for a separate court of the the *Juvenile Offenders Act, 1906*, (incorporated as Part III, *Justices of the Peace Act, 1908*) with some limited but uneven success. In the same vein, he made it known to Education Boards that any child expelled from school should be referred to the Branch for follow-up assistance. The practice of taking committed children to industrial schools and

receiving homes in police wagons (known as "Black Marias") was stopped, as was the bounty of £1 per head paid to police for apprehending absconders (Beck, 1950: 20). The framework of his plan was sufficiently developed for it to be published in the departmental report for 1920 (AJHR, E4).

Foreign influence. Several accounts of Beck's administration suggest that his reforms were based on ideas and practices imported from abroad. On a personal visit to Australia in 1907, Beck took the opportunity to visit the Child Welfare Department in Sydney, an event he recorded without indicating any practice he wanted to see emulated in New Zealand (Beck, 1950: 5). The Department of Social Welfare official manual for residential social workers records his visit to North America ". . . to study the provisions for dependent and delinquent children. This facilitated the framing of new proposals and a critical review of proposals drafted previously, and on his return, a Bill was drafted which later became the *Child Welfare Act 1925*" (DSW, n.d.). In a similar vein, it has been asserted that:

> In 1924, drawing upon a wide range of more advanced overseas examples, John Beck of the Special Schools Branch of the Department of Education, recommended a range of reforms affecting those categories of young people formerly characterised as 'neglected, destitute and criminal (Oliver, 1977: 17).

The plan of 1920 is prefaced with the statement that "A complete children's code has been drafted by the Branch on similar lines to what already exists in most of the Australian colonies, Great Britain, Canada, and the United States of America" (AJHR, 1920, E.4: 13). The key words are "similar lines". What is important to establish is that Beck had already determined a course for "his" reforms, long before his visit to North America. That is not to say that he was closed-minded about what he learnt on his overseas visit, and it is clear that he already thought some of those policies and practices admirable and worthy of adaptation here. Unlike the *Neglected and Criminal Childrens Act, 1867,* or Habens' boarding out innovations, both of English origin, filtered through Australia, there is, however, no evidence that can point to any direct cause and

effect relationship. On the contrary, the two practices he admired most in the American system, the administrative unity of the Children's Court and its social workers, and the training and professionalism of personnel, were denied realization during his superintendency. The most plausible construction to account for these beliefs is that Beck, the astute strategist, wanted to assure his political masters that New Zealand was following the leading foreign models of the day (Department of Education, 1927).[1]

An incident that occurred before his visit to North America is further evidence that Beck had no interest in copying foreign ideas, unless they coincided with his own plans. An official vistor to Christchurch industrial schools and reformatories, William Reece, brought back from a tour to Europe and the USA ideas on juvenile self-government of institutions. The Minister of Education arranged for Reece's report to be published as a parliamentary paper (AJHR, 1909: E.11). There the matter lay for twelve years until in 1921 the then Minister referred the issue to Beck for his views. Guessing that it was the George Junior Republic of the USA that the Minister had in mind, Beck demolished the scheme as elitist, expensive and entirely impracticable and in the process went on to show the superiority of his own management strategy in his revitalised training centres (NANZ, CW 40/1/7).

Child Welfare: The Act and the Branch

This section outlines the major provisions and subsequent operation of "*An Act to make better provision with respect to the maintenance, care and control of*

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[1] The date of Beck's visit to North America has been given incorrectly in several sources, possibly from an error in Child Welfare documents. The biographical note prepared by Foster for McLintock's "An encyclopaedia of New Zealand", gives the date of the visit as 1924, as does the Department of Social Welfare's "Manual for Residential Social Workers" (DSW, n.d.), in its section on child welfare history. Beck, in both his memoirs (Beck, 1950) and the official report of the visit (Department of Education, 1927), records that he left for the USA in 1925. The existence of the latter belies Oliver's assertion (1977: 27, note 39) that no report was ever printed.

children who are specially under the protection of the State; and to provide generally for the protection and training of indigent, neglected or delinquent children, 1925", which came into force on the first day of April, 1926, and was repealed on the first day of April, 1975. The long title gives some clues to the shift in social attitudes since the promulgation of "*An Act to provide for the care and custody of neglected and criminal children, 1867*". Indigence, and its remedy of "maintenance", now figured as a state responsibility, and the goals of care and custody were supplemented by the concepts of protection and training. Up to 1944, the principal Act was amended by the *Child Welfare Amendment Act, 1927*, and *Statutes Amendment Acts* of 1936 and 1941.

Administration. The post of Superintendent, Child Welfare Branch, was created in s.4 to replace the former Officer in Charge, Special Schools Branch, together with a designated Deputy Superintendent ready to assume all powers "whether by reason of death, resignation or otherwise". The Superintendent was responsible both to the Minister and to the Department of Education's permanent head, the Director. Some functions were reserved for the Minister alone, such as financial and establishment issues which could not be delegated below cabinet level, and approval of discharges from wardship before the age of twenty-one (s.23). The Superintendent was subordinate to the Director in all functions except what is best described as "casework", that is, any decisions made about the care of State wards of whom the Superintendent was the the legal guardian.

Staffing and Organization. The child welfare officer (CWO) became a key functionary in the operation of the Act, which empowered certain law enforcement roles.[2] The Act defined "Child Welfare Officer" as any person appointed by the Minister, by notice in the *Gazette*, and legislated for other appointments ". . . as may be necessary for the effective administration of the

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[2] Until the late 1960's, the casework of Child Welfare was divided strictly on gender lines. Women CWOs dealt with all female matters and with boys up to eight years of age. Men CWOs dealt with older boys. As an administrative convenience, the Branch adopted the term "Boys' Welfare Officer" for men.

Act". The tasks previously carried out by visiting officers of industrial schools, infant life protection officers, and juvenile probation officers were now combined into one role. By the creation of this office, the life chances, potentially the very life and death, of every child in New Zealand was put into the hands of these state workers.

Within a few years, the whole country was divided into administrative districts and, as the workload expanded, so too did the concept of a district organization under the control of "District Child Welfare Officers" (DCWO), until a classical bureaucratic hierarchy was constructed. DCWOs were controllers of all activities in their areas, including the receiving homes. Training centres, the new-style reformatories, answered directly to Wellington. There, Head Office, as the office of the Superintendent came to be known, promulgated rules and practice guides, and kept a tight rein on casework and administratives practices, especially staffing and expenditure. By *ad hoc* decisions over time, practices hitherto reserved for Head Office approval were delegated to district officers who in turn could delegate limited authority to CWOs. For example, in 1926, the Superintendent was personally authorising letters from CWOs requesting expenditure approval of as little as 2/6 (25 cents) for clothing items for any ward; by 1965, a DCWO could authorise the purchase of a bicycle. Whenever anything significant happened in a ward's career—an "incident", in their jargon—Head Office was informed. Thus, through a personalised filing system the Superintendent could at all times know the status of any of his wards, and a life history could be, and frequently was, constructed entirely from the ward's file, or the so-called "family file" when more than one sibling was known. Head office inspectors, peripatetic "eyes and ears" of the Superintendent, visited districts and institutions to invigilate both casework practices and administrative efficiency. Beck himself spent a great deal of time out in the field inspecting his empire: a practice that his successors emulated until defeated by the size of the ever-increasing task (McDonald, 1979a).

When CWOs were charged with investigating the well-being or conduct of every child brought to their notice, and if informal means were not possible,

their continuing clients and wards were given that status by order of the newly created Children's Court. Children could be the subject of a court hearing either by complaint action or by information alleging an offence. Those paths, and the Court itself, are now examined.

Complaint action. Where a child was believed to be in some continuing peril, a CWO or constable in swearing the complaint before a J. P. could ask under s.13(2), that a warrant be issued requiring the child to be taken into interim custody. The grounds given in the complaint could allege that the child was ". . . living in a place of ill-repute, or is likely to be be ill-treated or neglected, or that for any other reason the child should be forthwith removed from its surroundings". The same section detailed six grounds for making a complaint upon which a parent or guardian could be summoned to appear before the Children's Court. These were that the child " . . . is a neglected, indigent or delinquent child, or is not under proper control, or is living in an environment detrimental to its physical or moral well-being". Such broad grounds covered most contingencies of atypical behaviour, and there were subtle nuances of distinction between them. They covered either conditions of environmental circumstance or acts done by the child itself. To illustrate the former grounds, "neglected" covered children living with their caregivers and not receiving normal supervision and care; "indigence" was the category used for children whose financial support had been abandoned by the parent; "detrimental environment" categories covered both a type of neglect where physical deficits could be shown, and moral deficits such as brothels.

The latter grounds concerned the behaviour of the child. "Not under proper control" implied waywardness, self-activating behaviour such as running away from home, or in the case of children under seven years of age, offences under the criminal code. "Delinquency" tended to be reserved for sexual misbehaviour, especially promiscuity in girls under the age of consent and, following the Mazengarb inquiry into moral delinquency (Report, 1953), was re-defined specifically to include that behaviour by s.2 of the *Child Welfare Amendment Act (No.2), 1954*.

Initially, the Act defined a child as a boy or girl under the age of sixteen years. That was changed by the 1927 Amendment Act to anyone under the age of seventeen. The complaint strategy was necessary to make child offenders under the age of criminal responsibility—set at age seven years by the *Crimes Act,1908* —the subject of court action. There was a strong presumption of parental shortcoming no matter what the age of the child or the behaviour alleged, because the defendants in the actions were the parents. However, it was on the child itself that the decision of the Children's Court fell.

Children aged seven years or older could be charged in the Children's Court with any offence applicable to adults, under the *Crimes Act, 1908*, or the *Police Offences Act, 1908*, upon an information laid by a constable. The sole exception, provided by s.22, the *Child Welfare Amendment Act, 1927*, was any proceeding relating to a charge of murder or manslaughter, which were to be heard in the Supreme Court after a lower court depositions hearing.

The Structure of Children's Courts. The architects of the *Child Welfare Act* had, amongst other innovations, hoped to create a court presided over by specialist judges, held in rooms separate from adult courts and with little part to play for the police. In speaking to the Bill, the Minister of Education, Sir James Parr, suggested that Children's Courts were its main provision, and he went on to say:

> Up to the present there has been no special provision in New Zealand for dealing with children who commit breaches .of the law . At present they are dealt with in the same way as adults. They get into the hands of the Police. The police take charge of them and bring them before the Magistrates in the ordinary way. The Bill, however, proposes that Children's Courts shall be set up to deal with children, with the aim and on the principle that they require protection and guidance rather than disciplinary punishment. For this purpose special magistrates and special child welfare officers will be appointed (NZPD, 1925, 206: 585).

Few of those ambitions were entirely met. The provisions for Children's Courts in the principal Act were so unclear as to jurisdiction that a declaratory

interpretation had to be included in the 1927 Amendment.

The intent of the Act was to have specially trained and appointed magistrates sitting in these courts, and persons authorised to exercise jurisdiction had to be appointed by the Governor-General by notice in the *Gazette*. In the event, the idea was not taken up by the judiciary and, in common with other aspects that involved expenditure, was defeated by expediency. Magistrates were appointed for their availability on circuit rather than for special aptitude. The concept of "associate members" of Children's Courts, also appointed by the Governor-General, was introduced in s.27 of the Act.

> (2) Such person shall be appointed on the ground of special knowledge or experience deemed to be an advantage to the Court in the exercise of its discretionary powers under this Act.
>
> (3) The decision of the Court in any case shall not be dependent upon the concurrence of any persons so associated with the Court, but in all other respects all persons so associated with a Children's Court shall be deemed to be members of that Court (SNZ, 1925: 22).

Associates were mainly men and women chosen for their standing in voluntary social services and it seems that the Branch had expectations of them beyond the courtroom.

> The personnel of the Children's Court may include Honorary Associates, of either sex, whose function is to act as the children's friend and generally to assist the presiding Magistrate or Justice in arriving at his decision. So far, Associates of both sexes have been appointed only in the four large centres and in some of the smaller centres, and have proved of very material assistance not only to the Courts but to the officers of the Child Welfare Branch. The Department wishes to acknowledge the assistance that is frequently given by the Associates after the cases have been dealt with by the Courts (AJHR, 1928, E.4: 2).

From the anecdotal evidence available, the overall extent of their participation and their influence on practices and dispositions appears to have been slight, as this story recounts.

> My first Children's Court was in a church schoolroom with strong recollections of a long boardroom table, the Magistrate, his clerk and lady associate seated at one end and on the other side of the long table sat several police . . . and on the other Child Welfare staff - almost the whole office in fact. Along the walls sat about six persons from various social welfare agencies. During the whole Court sessions this assemblage was constant, and in the two years that I was there some of us rarely spoke; most looked mildly shocked or sympathetic as the occasion demanded. The Associate took little part in the proceedings. The story went that she was the landlady of two Child Welfare Officers and thus could have had special insights into the workings of Child Welfare. However, she preferred to keep them to herself (Lyons, 1970: 15). [3]

Although s.28 of the Act required a separate courtroom for children, financial constraints and administrative resistance forced a revision of policy in s.18 of the 1927 Amendment Act. This removed the requirement for a separate building and substituted the guidelines that persons attending sittings of the Children Courts should not be brought into contact with persons in attendance at other courts. In addition, wherever possible, Children Courts were not be held in ordinary court rooms and, if in court premises, nor should sittings be held at the same time as other courts. Children's Courts sat only once a week in main centres and as infrequently as once a month in provincial circuits. Writing of the 1940s, Lyons recalled that

> . . . most Children's Courts had to be held in the normal Magistrates's Court building but using the Magistrate's room. In the main centres it made for congestion in public areas, and in the country the attendance at the Magistrate's room was almost a public performance where privacy was limited in effect to the actual proceedings and was later at the mercy of untidy gossip.There were notable exceptions in the main centres . . . In Auckland a room was set aside in the Child Welfare Office. In Christchurch separate premises were established and have remained fairly well so ever since (Lyons, 1970: 17).

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[3] Christchurch Children's Court was the last to have Associates actively involved and their participation ceased in 1961. Both the male and female associates were octogenarians. As Registrar of that court at that time, the author endorses Lyons' perception of the minimal participation of associate members.

The powers of Children's Courts. What the Act and its amendments created was a court in which alternative jurisdictions could be exercised. That is, children over the age of seven charged with offences could be dealt with either under the criminal code or they could be dealt with as care and protection cases. The Children's Court had special powers which deviated from the common law principles applying to adults. On the matter of offences, s.31 allowed magistrates to act on the assumption that "where there is smoke there must be fire".

> When a child is brought before a Children's Court charged with any offence, *it shall not be necessary for the Court to hear and determine the charge.* Whether or not in any such case the Court determines the charge, it may, in its discretion, after taking into consideration the parentage of the child, its environment, history, education mentality, disposition, and any other relevant matters, make an order committing the child to the care of the Superintendent, or make any other order in relation to the child that the Court would have power to make if a complaint in respect of the child had been made under section thirteen hereof (SNZ, 1925: 22. Emphasis added).

Thus, as with the former industrial schools legislation, and until this provision was repealed in 1948, the matter which brought the child before the court was immaterial to its subsequent disposition. It was rare that the two were not connected, but decisions were permitted to be made on a balance of speculation about the child's capacity and the moral character and social standing of its home environment. Under s.13(5) it was not necessary for a complaint to be made for a child to be so treated. On the other hand, some standard of proof was required for complaint actions. After hearing an action, the magistrate, ". . . if satisfied of the truth of the complaint", had available two dispositions other than dismissal: the child could be committed to the care of the Superintendent, or placed under supervision, as juvenile probation had been renamed, of a CWO for a finite period.

The court had the power to try offences summarily or to send children to higher courts for trial or sentence. Children had neither the right to elect trial by

jury, nor the right to appeal against any decision of the Children's Court. The introduction of mandatory pre-trial investigation by CWOs, introduced by the 1927 Amendment, s.31, required that no proceedings could be heard or determined until a CWO " . . . had an opportunity to investigate the circumstances of the case and to report thereon to the the Court". This was predicated on the assumption that children's interests would be served by speedy investigation and the chance to issue a warrant to uplift a child from life-threatening circumstances. While CWOs were required to submit reports, magistrates were under no compulsion to read them, a result that Child Welfare folklore records occurred from time to time. Equally seriously, it was during this this period customary for pre-trial reports to be read by the presiding magistrate before the child's first appearance, a denial of the fundamental (adult) right to an unprejudiced hearing. Conferring these special powers on the court no doubt increased its concern, but diminished the legal rights of children.

Further discretionary powers were conferred on courts by the Act and its 1927 Amendment, allowing them to protect children, as either defendants or witnesses, from the contaminating and stigmatising effects of adult court hearings. In particular, s.20, the *Child Welfare Amendment Act, 1927,* provided for charges laid jointly against a child and an adult to be heard in the Children's Court, at magisterial discretion. The same Act, in s.21, allowed for the Children's Court hearing of proceedings against any person charged with an offence against a child. Similarly, under s.25, the Supreme court could refer back to the Children's Court any child committed tor trial or sentence, with the express purpose of having it made a state ward, or the Judge could make such an order directly. As a further gesture, a year's grace on the maximum age was permissible under the principal Act, s.32, allowing magistrate's courts discretion to refer back to the Children's Court any young person under the age of seventeen. This was amended to eighteen years of age when the 1927 Amendment increased the age of jurisdiction of Children's Courts to seventeen. Publication of children's names was prohibited by s.30(2) of the principal Act, although magistrates could authorise the release of reports of proceedings which did not lead to the identification of any child. Finally, the special powers

of Children's Court magistrates were extended by s.24(2) of the 1927 Amendment to give discretion on the matter of convictions. This read that ". . . it shall not be necessary in any proceedings in a Children's Court to record a conviction against a child even though the charge may be proved", and allowed for the imposition of any non-custodial penalty which might normally accompany a conviction.

Children's Courts: a critique. A special study of the origins and operations of the Children's Court made by Seymour (1976), helps to explain the significance of these policies. In his view, underlying the Child Welfare Bill

> . . . was a desire to introduce radical change and to create a distinctive court for children. These aims were not entirely achieved. What was enacted and, more important, the way the statute was implemented fell far short of the policy enunciated by the Minister: as it turned out, there was good deal of truth in an Opposition Member's charge that "this Bill is practically codification only of the law at present on the statute-book, and . . . there is nothing new in it" (footnote: NZPD,1925, 206: 585) . . . . It is difficult to determine why the aims of the court's founders were not completely achieved. A reading of Parliamentary debates suggests that judicial conservatism may have been a factor, and the Government's commitment to radical reform might have been less strong than the words of Sir [James] Parr had suggested. Both these explanations are supported by comments which took place in 1927 (Seymour, 1976: 33).

Seymour went on to examine these discrepancies between the expressed intent of the promoters and the actual outcome: the role of the police was intensified rather than minimised; the separate premises condition was diluted; the role of associates was ineffectual; a retreat from the principle of special magistrates was apparent; suppression of the publication of children's names was openly flouted; convictions were recorded unnecessarily. With the qualifications that enormous variations could be observed from one Children's Court to another, and that some magistrates caught the spirit of the *Child Welfare Act*, Seymour was of the opinion that

> . . . the Children's Court did not develop the distinctive identity which those who drafted and introduced the Bill had envisaged. What

> emerged was not a special tribunal for children, but an adult court which had been clumsily modified, a court whose powers and procedures were contained in a confusing collection of statutes, rather than a coherent code reflecting clearly defined aims (1976: 37).

This legislation remained the core of procedures in juvenile justice and legal action for care and protection cases for fifty years. As recorded in the next chapter, steps were later taken to redress some of the loss of rights suffered by children as a result of the paternalistic discretion accorded to the Children's Court.

Summary. Despite the failure of the promoters of the children's cause fully to realise their hopes to introduce a comprehensive legal code for children, nevertheless the *Child Wefare Act,1925*, radically changed the relations between the state, parents and children. A fragmented and localised pattern of governing children was replaced by a centralised mode of benelovent state paternalism. All families and children were brought under the scrutiny of the state by the creation of a central authority, the Child Welfare Branch, and under its care and control when Children's Courts so determined. The new branch extended to cover the country, and wide powers and diverse tasks were given to the CWOs as law enforcement officers. They became, in effect, statutory social workers who took over the invigilation of the physical and moral well-being of children as well as responsibility for the nurturance of children taken into care.

The office of the Superintendent of Child Welfare brought a degree of standardisation of treatment and procedures to the care of its wards, and the inaugural incumbent set a tone of normalization which prevailed in the long-run. The distinction between dependent and delinquent children was deliberately minimised with the acceptance that inadequate parenting and poverty led to acting-out behaviour, and that children were merely the victims of circumstance. The Child Welfare Branch also had the statutory authority to enter into voluntary agreements with parents to assume care and control of children, and it is clear from Beck's words and deeds that he encouraged the

use of this provision and would have welcomed greater use. The methods used to care for children in state and non-state care are reviewed in the next section.

SUBSTITUTE CARE AND CASEWORK

Practices in substitute care for children began to assume a new form from 1914, supplemented by non-custodial interventions in family life. It has already been noted that the internal reorganisation carried out in the Special Schools Branch resulted in a small-scale, centralised bureaucratic structure by the time it was transformed into the Child Welfare Branch in 1926. Its administrative overlap of responsibilities with charitable aid boards was resolved during this time. Many aspects of the "Beck reforms" concerned the rationalization of institutional care, and its relation to preventive work, fostering and adoption. The final step to bring agencies in the non-state sector under the control of the state was taken in Part I of the *Child Welfare Amendment Act, 1927.* This section looks at those new practices and policies in operation, and their scope, function, and growth in both the state and non-state sectors, between 1914 and 1944.

State Provisions

Charitable Aid Boards. By 1915, the demarcation line between Boards and the Department of Education in responsibilities for children in care had become rather blurred and administratively irksome. The Boards themselves were in constant dispute over the settlement of children, and in 1918 the Solicitor-General was asked to give an opinion on the practice of charging Boards of origin for the maintenance of committed children in state care. His opinion pointed out that most of the funds of the Charitable Aid Boards were derived from central government, and he considered the practice "inexpedient" (NANZ, CW 3/5/1). As a consequence of this awareness, Beck was free to be more forthright in his pleas for rationalization.

> Under the provisions of section 85 of the Hospitals and Charitable Institutions Act, 1909, the Hospital and Charitable Aid Board for the district is liable to the extent of 8s a week for the maintenance of any child committed to an industrial school as a destitute child in terms of section 17(a) of the Industrial Schools Act, 1908. Under this provision the Education Department collects about £13,000 annually from Hospital and Charitable Aid Boards towards the maintenance of such children. When it is remembered that of this amount fully 50 per cent. represents payment already made by the Hospital and Charitable institutions Department of the Government, and that in making its claim the Education Department spends a great deal of time and much labour, it is questionable whether the amount collected is worth the trouble (AJHR, 1920, E.4:15).

This practice came to an end with the *Public Health Act, 1920*, which repealed s.85 of the *Hospitals and Charitable Institutions Act, 1885*, thereby relieving Boards of the liability for committed children admitted to industrial schools. Non-committed children continued to be a charge. When times were hard, the undeserving poor were felt to put an extra strain on the system, with the result that the quasi-state boards would off-load some costs to the Department of Education. Beck refers to

> . . . the rising cost to the State of the off-spring of feeble-minded parents, who generally speaking had large families, whom they were unable to maintain. The procedure was to apply to the Charitable Aid Boards for relief, which, it was beginning to be felt, could be more profitably spent. What happened, then, was that when the C.A.B. had no home of their own for destitute cases, they handed the children over to the police for committal to the nearest receiving home, where the numbers quickly accumulated, thus providing an embarrassment to the ordinary working of the place (Beck, 1950: 19).

Economic conditions, and the consequent pressure on Charitable Aid Boards, were held to be the cause for such an upsurge in committals to 864 new cases in the year !919, more than double for the previous years of 381 for 1918, and 358 for 1917. In any case, Beck had a jaundiced view of the ability of Charitable Aid Boards to deal fairly with children and, as the following extract shows, he thought that the government, as represented by his own branch, was the superior agency.

> Apart from this [financial] aspect of the case it is contended that the Government should be primarily responsible for the maintenance and care of all permanently destitute children, and it should not be left to a Hospital and Charitable Aid Board to have the authority to deal with such children, except as a temporary expediency. At present some Boards prefer commitment to industrial schools in such cases as the most economical method so far as the Board is concerned of dealing with the children. Other Boards place children in foster-homes which are not supervised by the Department [of Education]; other Boards, again, prefer to admit these children to institutions not specially set apart for children, but for destitute adults and children generally (AJHR, 1920, E.4: 15).

Charitable Aid Boards had a much diminished role in the substitute care of children once Child Welfare was under way in 1926. For their own clients, boards and their relieving officers remained quite active in placing children in temporary care, especially where a parent was admitted to hospital. Their role in underwriting health care for the poor, and a close association with hospitals, meant that their vestiges were apparent in the health care system well after the *Social Security Act, 1938*, made them virtually obsolete.

The end of industrial schools. The scheme which Beck envisaged was a reduction in the number of large, isolated institutions and a more clearly differentiated function for those retained. There was to be one central institution of the reformatory type for boys and one for girls. In addition, it called for the creation of a number of small, single-sex institutions in the main centres which would function as short-stay homes and classification centres, and as adjuncts for field work in foster care, probation and preventive work. Central to his plan was the need for one school each for backward boys and girls. In typical fashion, he put forward a proposal which told as much of the story as he thought would be politically acceptable and, on receiving ministerial approval in principle, in 1918 he set about dismantling the old system. From the tone of his memoirs, it seems likely that Beck regarded this transformation as his greatest achievement. (Beck, 1950: 12-6).

Properties were purchased for receiving homes in Auckland, Wellington, Christchurch and Dunedin which, together with the existing homes, provided for

a separate boys' and girls' home in each place. A site for a special school for backward girls was developed at Richmond, near Nelson. Using Stoke Industrial School as a staging post, the industrial schools at Burnham, for boys, and Te Oranga, Christchurch, for girls, were wound down and finally closed. Beck personally helped in the reclassification of residents in an effort to avoid filling Otekaike Special School with what he considered non-trainable custodial pupils. There was at Burnham a corps of about twenty young men whom the manager kept permanently in the detention house and whose transfer to the open conditions of Weraroa he vehemently opposed. When, on the urging of the manager, the Minister agreed to intervene to delay their transfer, Beck had a clandestine forewarning. Fearing that his plans were in jeopardy, he ". . . took the daring step of having every boy transferred across the Straits that night, so that when the Minister communicated with me next morning, instructing me to refrain from further removals, the boys were already at Weraroa" (Beck, 1950: 14).

Community resistance to the closing of Te Oranga also had to be faced. A meeting the Minister of Education asked him to attend in his company was, Beck found,

> . . . a large gathering of church and welfare officers, who had met to protest against the closing of Te Oranga, on the assumption that girls of such wayward character would prove a menace to the public. The atmosphere was hostile, and the speeches bitter. One well-known Christchurch minister [of religion], pointing at me an accusing finger, stated that no decent lad would be safe in the community! (Beck, 1950: 16)

Needless to say, Beck's rhetoric carried the day, leading to a reconciliation and no further complaints.

By 1926 a well-organized institutional system under central control was established although Te Oranga was not re-opened until 1928. Industrial schools as such ceased to exist with the 1925 Act, and new nomenclature was introduced. The Minister had authority, under s.7(1), to name any place an

institution for the purposes of the Act. Institutions were not required to be classified by type, but the Act went on in s.7(3) to give some guidelines:

> In particular, and without limiting the generality of the authority conferred in this section, institutions of the following kinds may be established pursuant to the authority conferred, that is to say:
> (a) Receiving-homes, where children may be received and maintained pending the making of arrangements for their admission to suitable private homes, as provided for in this Act, or until they may be otherwise dealt with in accordance with this Act:
> (b) Probation homes, in which children may be kept for special observation or disciplinary treatment:
> (c) Training-farms and training-schools, in which children under the control of the Superintendent may be trained in the art of farming in its several branches, and in other suitable occupations:
> (d) Convalescent homes, where children may be kept for special treatment while recovering from the effects of illness or to avoid illness:
> (e) Any other institution the establishment of which is in conformity with and intended to promote the general purposes of this Act (SNZ, 1925: 22)

Domestically, the institution types shown in Table 8 were adopted, although colloquial names based on their suburb were used interchangeably and, by the pressure of common usage, some were eventually officially adopted.

National and local institutions. The new branch ran all its institutions directly from Wellington, but within ten years a different organizational structure was adopted. In Auckland, Wellington and Dunedin, the field workers, now known as child welfare officers, had from 1918 been housed in their own identifiable city offices. In Christchurch, they were accommodated at the institutions. The Receiving Home there, for girls and young boys, was the headquarters for all female child welfare work in the top half of the South Island, as well as being a short-stay residential refuge. The same held for work done by the male officer from the Boys' Home, Stanmore Road, Richmond. As part of a developing pattern, in the early 1930's male and female field work was combined in a single city-centre office, as previously described. Total control of the receiving homes was taken over by these district offices, and the resident

Matron and Housemaster, respectively, answered directly to the District Child

TABLE 8

Institutions under the control of the Child Welfare Branch at 1928

Type	Name and Location	Formerly
Training Centres	Girls' Home, Burwood, Christchurch	Te Oranga
	Boys' Training Farm, Weraroa , Levin	
Receiving-homes*	Girls' Receiving-home, Auckland	
	Boys' Receiving-home, Auckland	Auckland Industrial School
	Girls' Receiving-home, Hamilton	
	Girls' Receiving-home, Napier	
	Girls' Hostel, Wellington	
	Children's Home, Miramar, Wellington	
	Boys' Receiving-home, Wellington	
	Girls' Receiving-home, Christchurch	
	Boys' Receiving-home, Christchurch	
	Girls' Home, Dunedin	
	Boys' Receiving-home, Dunedin	Caversham Industrial School
Special Schools	Otekaike Special School for Boys, Duntroon	
	Richmond Special School for Girls, Nelson	
	School for Deaf, Sumner, Christchurch	

* Use of the hyphen was later discontinued

(Source: AJHR, 1928: E.4.)

Welfare Officer. Each district with a receiving home collaborated with a group of so-called "contributing districts", assuming temporary charge of children sent for institutional care. Eventually, these receiving homes and boys' homes became known as "dependent institutions", a label which described their status exactly, because they were entirely dependent upon the skills and interests of their field officer superior for the successful running of their homes. This pattern has remained unchanged except that local homes are now known as "district institutions".

National institutions were self-governing places, comprising the two training centres, and the two special schools for the backward. Officially, these

also included the School for Deaf, Sumner, but Child Welfare had a diminishing role in the professional aspects of the school until finally it was merely a service provider of non-teaching staff, such as houseparents and domestics, and residential expertise to the special education section of its parent department. Their managers answered directly to the Superintendent, and it was his office (initially Beck personally) who approved admissions and discharges from amongst the competing claims of district recommendations. That pattern has also remained largely unchanged for the training centres.

Adoption. There were no significant statutory changes to adoption procedure between the *Infants Act, 1908*, and 1955. There were, however, considerable changes in practice. The role first taken over from the police by the Department of Education in the *Infant Life Protection Act,1907*, requiring the supervision of homes where children were placed with a view to adoption, devolved first on female visiting officers working from receiving homes and then, from 1925 on, CWOs. Administratively, adoption was part of ILP work, and put together with the new provision for investigating the welfare of new-born illegitimate children, formed the basis for the brokerage work which Child Welfare was later to be given. For a department which did not administer the Act, it accrued a great number of tasks connected with adoption. Not the least was the growing practice for Magistrates to call a report from a child welfare officer, in addition to a police report, when an adoption application was filed.

Foster care. The *Child Welfare Act, 1925*, specifically legislated against institutional care and explicitly in favour of foster care, s.19 stating that "Children . . . shall not, save in exceptional cases to be determined by the Superintendent, be permanently maintained in any institution under this Act". Beck's mission of de-institutionalization was fulfilled, as the proportion of children in institutions steadily declined year by year, when measured against the total numbers of children in care.

With the passing of the 1925 Act, the Child Welfare Branch became responsible, directly or indirectly, for the welfare of all children in foster care.

ILP work, the licensing and inspection of foster homes caring for children under the age of six years, meshed neatly with their own task of finding and supervising foster homes for state wards. Church agency-sponsored foster homes were not exempt, unless the agency itself was registered as a children's home under the Act.

Supervision: the new juvenile probation. Beck's attempts in the late 1920s to persuade magistrates to make more extensive use of field officers as probation officers met with varied success; in some places it worked well, in others it faltered (Beck, 1950: 13-4). By 1920 he reported enthusiastically on the operation of the juvenile probation scheme for boys, especiallywhen used in conjunction with a period of residence in a probation home, as boys' receiving homes in the four main cities were then called.

> The probation homes provide temporarily for boys not necessarily brought under the operation of the Industrial Schools Act. For instance, boys, for the time being uncontrollable, are frequently admitted to the home by private arrangement between the Probation Officer and the parents. In addition, the Magistrates, in dealing with boys found guilty of petty offences, invariably prefer to see them admitted for short periods to the probation home for the purposes of training and discipline, rather than register a conviction followed by commitment to an industrial school. . . . The idea of giving a boy a chance in a fresh environment and under the kindly supervision of experienced probation officers has had a marked effect on the total number committed to industrial schools. . . . Apart from the financial saving to the State, the probation system has provided a decided deterrent on juvenile delinquency, and has been the means of stimulating responsibility in the parents (AJHR, 1920, E.4: 5).

Juvenile probation was renamed and its functions broadened when brought into the scope of the 1925 Act. Where a complaint was proven, the Act provided in s.13(4) that an alternative to commital was for the child to be placed under the supervision of a CWO for a fixed period. This was customarily for two years or until a young person's sixteenth birthday (seventeenth birthday when the 1927 Amendment raised the jurisdiction age). Those charged with offences could also be dealt with under s.13, and this very rapidly became the most common disposition for all children and young persons. It opened the way for a

new system of controlling the poor and the inadequate. The critical aspect of the supervision order was the statutory authority it gave for the CWO and the Branch to maintain surveillance of the family and to make interventions where necessary. While ostensibly it was the child, or children of a family, who was the target of official concern, in reality it was the parents or caregivers with whom the CWOs worked. This device, known in the Branch as "legal supervision", created a *de facto* family casework service which impinged on the lives of thousands of families whose children came under notice. Many families, often extending over several generations, became permanent clients of that system, with the careers of individuals experiencing the full array of official interventions.

Preventive supervision. As part of the Beck plan, an informal casework relationship could be entered into as a form of preventive work. Where this continued, the child or the family was given the status of "preventive supervision", although the Branch never had statutory sanction to spend state funds on such work (giving rise to the Branch jest that it would more properly be called "illegal supervision"). Preventive work was designed as ". . . the investigation, occasional social readjustment, and necessary supervision by Child Welfare Officers in the early stages of any cases brought under notice" (AJHR, 1928, E.4: 1). So, in addition to the many families tied to the Branch by Court order, its influence extended also to those who agreed to intervention by a CWO. The dependent situation of parents who were poor or coping with troublesome children gave them little chance to resist, and recalcitrant parents could be made more malleable by the hint of complaint action. Preventive status was frequently continued at the expiry of a legal supervision order, leading to indefinite state surveillance with or without the informed consent of the parties involved.

Illegitimate birth enquiries. The logical extension of practices arising from the infant life protection policy was to identify "at risk" children at birth. Those most likely to be placed in nursery homes (the "baby farms" discussed in the last chapter), or private foster care, were the ex-nuptial new-born. The 1925 Act

required in s.41 for the Registrar of Births and Deaths to notify the Branch of the fact of the birth of an illegitimate child. In turn, a statutory obligation was placed on the CWO receiving the notice

> . . . to make such inquiries as may be necessary to ascertain the condition of the child and its mother, and if satisfied that the case is one in which the welfare of the child requires that it should be cared for as provided by this Act he shall report such case to the Superintendent, who shall direct that such steps, if any, as in the circumstances he thinks necessary be taken under this Act (SNZ, 1925: 22).

In this way, state surveillance was extended to an increasingly sizeable proportion of the annual cohort of births. Once the scheme got under way, it opened the prospect for the Branch to become the main baby-brokers in the adoption and fostering business. Contact was frequently made before the Registrar's notification when pregnant unmarried women were referred by other agencies or word-of-mouth for adoption counselling, ante-natal placement or post-natal assistance. Later, the Branch took a very active part in facilitating maintenance agreements or court action against putative fathers, and CWOs acted as collection and disbursement agents of maintenance monies.

The social stigma of illegitimacy, and the concomitant jeopardy of public odium or blackmail attempts, was reinforced by the Act's provisions in s.41(3) for CWOs to ". . . maintain, and aid in maintaining, the secrecy of all particulars contained in such notification" (SNZ, 1925: 22). Indeed, the section went on to provide for dismissal without notice for any CWO against whom a failure to observe the obligation of secrecy was established.

The Non-state Sector

The influence of non-state child rescue organizations waxed and waned during this period. From a high point as the primary, most active agents, their role as the guardians of the physical and moral wellbeing of children was severely circumscribed by the intrusion of the state. At the same time, non-state residential care for children in the conventional mode burgeoned,

accompanied by new health-oriented initiatives. These are discussed later in this chapter. Moreover, from 1926, the state became not only a major provider of services to children, but also the regulator of its non-state competitors. This section describes the adjustments made by the non-state organizations to that new development.

The late nineteenth century had witnessed the growth of the large, industrial-school-type institutions run by the few pioneering churches as the preferred mode of caring for dependent children. A shift in emphasis and volume in the new century brought a proliferation of smaller institutions of every Christian denomination and some secular welfare societies. Whereas the state, for reasons of population distribution and economies of scale, was forced to keep to undifferentiated institutions in a few localities, the work of child-saving entrepreneurs in the non-state sector was dictated by localism. They had no need to consider the national picture, because their catchment areas were usually diocesan. It was also during this period that the distinctive differences between the state and the non-state residential child care systems took shape. State institutions were mainly short-stay places catering for crisis and assessment placements of children en route to foster care or training centres. The children retained in residential care were the older and more difficult children, isolated from their families and siblings. In contrast, the non-state system provided a greater degree of substitute family care, taking younger children, often relatives together, and keeping them in care for much longer periods (McDonald, 1977: 107-9).

Registered children's homes. Prior to the passing of the 1925 Act and its 1927 amendment, two categories of non-state children's institutions existed. These were the private industrial schools, all run by the Roman Catholic authorities, and "exempt" homes and orphanages, so-called because the infant life protection legislation had provided for recognised church and non-profit societies to be granted exemption from the licensing and inspection requirements covering private nurseries and foster homes. Industrial schools were answerable to the Special Schools Branch, whereas orphanages, except

where they had some residual status as industrial schools to enable them to take residents committed under the industrial schools legislation, were ostensibly the responsibility of the Hospitals and Charitable Institutions Department. School inspectors had the authority to inspect the educational standard of classes operated in those institutions. Also in this category were a number of facilities which catered for residents of all ages, from infants through to the frail aged, such as the Benevolent Institution of the Otago Benevolent Trust, in Dunedin. To maintain a child permanently in an institution was also an affront to the boarding-out policy which governed the state's own practice. This variation in purpose, statutory oversight, and residents' characteristics, together with ". . . an utter lack of co-operation and co-ordination even between Government Departments, without including the work carried out by Charitable Aid Boards and the social service agencies of the various churches" (AJHR, 1920, E.4: 13), was a target for Beck's reforms. Having brought industrial schools to heel, he attacked, through a strategy of recasting the functions of church children's homes, their unbridled autonomy as defeating the state's responsibility to children. In his position statement for state control of the growth of the orphange system and the supervision of child residents, he wrote that:

> During the past five or six years the orphanage system for providing for normal destitute or dependent children has grown with great rapidity. Almost every Church has an orphanage in each of the large centres of population (Presbyterian, Anglican, Salvation Army, Methodist, Baptist and Roman Catholic). At the present time there is provision under the Education Act for the inspection of orphanages and private institutions, but there is no provision for enforcing the carrying-out of the recommendations of inspecting officers. I think it may be admitted without reservation that the social-service sections of the Church organizations are earnest in their desire to provide for the child who either has no parents or whose parents if alive are unable for various reasons to provide properly for the child. Unfortunately, however, these organizations have started out on a system that has been condemned and abandoned in most enlightened countries as a means of providing permanently for the orphan or the child whose parents are either deserters or unfit characters to be entrusted with the upbringing of children. To put the matter briefly, the State has allowed private enterprise under the guise of benevolence to step in and handle the children of the State under a system that is obsolete, without any Government supervision either as regards the establishment of institutions, the selection of children who are admitted to these

> institutions, or the training or ultimate destiny of the children so dealt with. I do not think, however, that the Department can afford to ignore the valuable work that has been carried out and is being performed now by these organizations, but there is a great need for co-ordination of methods under a central Government authority.
>
> For children whose parents are unable for the time being to provide them with a home, or for the widower who desires to have his children placed temporarily where he can see them frequently, probably no better institution than the church orphanage can be found; but for the child who is permanently bereft of his parents the system of placing in an orphanage is not, in my opinion, the best method of dealing with him. Few of these organizations, if any, possess an adequate system of after-care supervision, so necessary for the child without friends or family ties when he has to face the world. It should be the duty of the State to deal with all such children by providing permanent private foster-homes for them (AJHR, 1920, E.4: 15).

The category of "industrial school" disappeared with the 1925 Act, but it remained for the 1927 *Child Welfare Amendment Act*, Part I, on Children's Homes, to bring former industrial schools and all formerly "exempt" children's institutions under state inspection and control. With the exception of boading schools ". . . conducted wholly for educational purposes", and hospitals catering for children, all existing homes and henceforth, all new homes, were required to apply to the Minister of Education to be registered. To summarise briefly the effect of this, registration required the controlling authority to; nominate a statutory manager (s.3); allow initial inspection of the premises (s.6) and periodically thereafter (s.11) by Child Welfare; keep records of the background of all inmates and their movements and to submit an annual return to the Superintendent of Child Welfare; have the physical plant and alterations approved by Child Welfare (s.7 , s.8 and s.9). Fresh powers were given to the managers to enter into agreements with parents to assume the control of any child (s.13), giving the manager guardianship on the same basis that the Superintendent had over state wards. Such agreements were to include arrangements for the payment of maintenance, if any, which could be enforced by registration in a magistrate's court. Home managers had to promise that they would try to recover maintenance from parents of residents when capitation subsidies by the state were later introduced.

This system, with only minor modifications, has remained the basis for the legal operation of non-state children's homes, and their relationship with the state authorities. Although there were disagreements from time to time, the two sectors developed an interdependent relationship through the practice of placing state wards in non-state institutions. That ensured the cost was borne by the state, which in turn could be satisfied that the homes met its own standards of care.

At the end of 1927, there were fifty-five registered children's homes catering for 2,214 residents under sixteen years of age. Approximately six per cent of that total, 125 infants, were under twelve months of age, and almost all of those were in nursery sections attached to Salavation Army maternity hospitals. Those six maternity hospitals, serving unmarried mothers, gave that denomination the biggest annual turnover of admissions and discharges. Four homes, one Anglican, one Presbyterian and two Roman Catholic, had rolls that reached three figures, the largest being the Catholic St Joseph's Orphanage, Upper Hutt, with 183 residents (AJHR, 1928, E.4: 11). At the end of 1944, the number of institutions had increased fifty per cent and average rolls had dropped. Eighty-two homes were then registered, catering for for a total of 2,790 children (AJHR, 1945, E.4: 5).

EDUCATION

It was during this period from 1914 to 1944 that considerable changes were made in the education policies governing children. In brief, this was the beginning of that time when more children than ever before would henceforth attend school regularly and young persons would stay longer at school than in the past. So far as education is considered an investment in social capital, it is significant that the chosen period opened with new provisions for compulsory attendance and closed with an extension to the minimum school leaving age. Moreover, those policy changes and their consequent practices formed the

structure of the modern relationship between the state, children and the school system. These events are dealt with in turn.

On the question of compulsory attendance, the consolidated *Education Act,1914* , brought together piecemeal changes made in the law since the original Act of 1877. It was these requirements, according to Ewing (1969: 29), which together with an increasing efficiency in the machinery of enforcement, led to the practice and acceptance of universal schooling. In the same report, other variables thought to have helped that transition were urbanization, mercantilism and the demand for literate and numerate workers, and a turn away from the family as the prime economic unit. Schools also became more humane and attractive places leading to the belief that children went more willingly to school (Wordsworth, 1976; Ewing, 1969: 30) and that ". . . by 1914 the battle of compulsory attendance had been won: nearly all children between the ages of 5 or 6 and 13 or 14 were going regularly to school (Ewing, 1969: 30). From that date, parental expectations and social norms have forestalled any serious discussion on the pros and cons of a compulsory course of formal instruction for all children.

Secondary Education

It was noted in the last chapter that secondary schooling was realised for a few poor children only after the introduction of "free place" legislation around the turn of the century. Although the financial barrier was eased, an examination hurdle continued for thirty years to allow only "proficient" pupils through to secondary school. Requiring pupils to stay longer at school was one of the keys towards a universal secondary schooling and the *Education Amendment Act, 1920*, actually raised the school leaving age to fifteen but this was never put into force. In 1930, the then Minister of Education, the Hon. Harry Atmore, tabled a report of the Parliamentary Committee on Education entitled *Educational reoganisation in New Zealand.* The onset of the depression pre-empted any action on the Atmore Report, but many of its observations and recommendations foreshadowed issues central to educational debates for

some decades. In particular, the report raised the whole question of elitist access to secondary schooling with the observation that it sought to revolutionise the state of affairs that ". . . our elaborate system of post-primary schools, the cost of which necessarily falls upon the whole of the tax-paying public, thus fails to confer any corresponding benefit upon children of one half the number" (Report of the Parliamentary Committee on Education, 1930).

It is asserted in the Ewing report that:

> The most important single event in the later history of the New Zealand primary school was probably the abolition of the proficiency examination in 1936. This action was taken for the double purpose of liberating the primary schools from an external control no longer deemed necessary and of removing the last remaining barrier to free secondary education (1969:34).

Most importantly, the 1936 amendment also required state secondary schools to accept free place pupils if they wished to continue the similar level of state funding. Thus, a trickle of extra children going on to secondary schooling was by the end of the period destined to become a flood when the leaving age was raised to fifteen.

Wartime measures. Emergency measures taken during both wars to secure plant and resources for the armed services inevitably affected the education service in both large and small ways. The most significant innovation was the introduction and periodic renewal of the school military cadet scheme under which boys in selected secondary schools were drafted for basic military training. The most obvious disruption was the mobilization of male teachers and during the Second World War the "manpowering" of single women for essential war work (Ebbert, 1984: 47-55). The occupation by American forces and the war effort escalation after Pearl Harbour put pressure on both state and private social services. The campus of the School for Deaf, Sumner, was commandeered by the miltary shortly after the Japanese opened the Pacific theatre of war in December, 1941. As a wartime measure, an outpost school was begun in 1942 at the recently completed Titirangi Hotel,

near Auckland, and in 1946 this became a semi-autonomous school for the deaf catering for the Northern region (Allen, 1980: 74). The three health camps in Wellington Province were sequestered by the military, causing a hiatus in the flow of needy children to those programmes (AJHR, 1944, H.31: 8). Similarly, the campus of the Weraroa Boys' Training Centre at Levin was taken over by the Air Force and the residents moved a few miles away where they helped build a new institution with a zest and sense of group loyalty rarely demonstrated in institutions for young offenders (Peek, 1959: 15).

Special Education

This was also the period during which the foundations were laid for the modern practices with educationally subnormal children. In particular, the residential special school system was complemented by "special classes" for "backward" children attached to ordinary state schools. However, the intent of the administrative provisions consistently fell short of the demand. Under the *Education Act, 1914*, the responsibility for educating backward children rested entirely with the parents. The latter either made their own provision or they could be forced to send them to a special school. While special schools had removed troublesome children out of the public awareness, one of the most disadvantaged groups of children were those excluded from the state school system for so-called backwardness. (That many of these children were educable and a few capable of superior attainment is a sad but inescapable artefact of the primitive educational technology of the time.) Ineducable children became the responsibility of the Mental Hospitals Department. Most parents, especially those outside of the main centres, had either to surrender their child to a distant residential institution or to cope entirely by themselves. *The Education Act, 1914*, had a grand disclosure clause requiring parents, teachers, constables and other officials to notify the existence of feebleminded children upon penalty of a £1 fine. Thirty years later, when the Act was still operative, Winterbourn was moved to comment acerbically

It is obvious that this provision has never been put into operation;

> indeed, with the limited number of educational institutions at present available, and of officials capable of diagnosing the cases reported, the Department [of Education] would probably be embarrassed if it were generally acted upon. . . . One cannot help being struck by the amount of legislation, much of which appears to be sound and good, on which no action, or very little action, has been taken. And one wonders if there is any other part of the law containing so much which is, and always has been, a dead letter (Winterbourn, 1944: 61-3).

Special schools and classes. The opening of Richmond Girls' School, near Nelson, in 1916, completed the first round of institutional reorganisation planned by Beck. This school for the educationally backward was the female equivalent of Otekaike Special School for Boys and, in the same fashion, had a close relationship with the network of services later operated by the Child Welfare Branch. Admission to either school was reserved for children who were difficult at home, or hard to place in foster homes, and who were measurably subnormal but biddable and trainable (Beck, 1950).

Inspector-General Hogben had suggested as early as 1908 that backward children in the larger cities could be catered for in special classes, but it was some time before they materialised:

> The first classes were actually established under regulations governing the teachers' training colleges, which were gazetted in 1914, and required colleges to provide various 'models, including either a junior kindergarten or a class of backward children with not more than forty pupils. (Today eighteen pupils at the most are considered to be enough.) . . . . in 1917 a class was opened at the Normal School [Auckland]. . . . in 1919, the second special class was established at the Thorndon Normal School (Wellington), under the training college regulations, and the third was opened at the Christchurch Normal School in 1921 (Winterbourn, 1944: 39-40).

From those hesitant beginnings, special classes expanded until in 1942 throughout New Zealand they served a total of 769 children, comprising 465 boys and 304 girls. Although special classes grew slowly, they provided for an increasing proportion of the primary school population as a whole. In 1927, special classes' enrolments made up 0.13% of the total roll and 1942 they made up 0.33%. Winterbourn (1944: 57), who compiled these figures,

observed that provisions had been extended at a very slow rate and that despite the advances observed, those enrolments made up only a small number of the so-called educable defective and dull pupils for whom provision should have been made. It was, of course, owing to the advent of this new breed of educational experts such as Winterbourn that an era of psychological activity was at its threshold.

HEALTH

The idea of children as social capital gained most credence from the initiatives taken for state propaganda and service in the area of child health. Perhaps more than any other activity, promotion and investment in health characterised this period and, from a dismal base line, the health of New Zealand children took a great leap forward. This period began with a vigorous state interest in all aspects of child health and hygiene, carried forward to a degree that saw children as the principal beneficiaries of the state-subsidised medical services introduced at the end of this period. Three phases of health policy are evident in the period 1914 to 1944. Firstly, there was an awareness phase, a stage of investigation and elaboration of children's health status, highlighted by the adverse findings of the medical surveys of World War One male military recruits. Secondly, there was an action phase that saw the intoduction of the social hygiene principles and the growth of state and non-state interventions. Thirdly, there was a consolidation phase, during which state subsidies of health care turned access to hospitals and quality medical services for all citizens into a social right and expectation.

State endorsement and encouragement of initiatives in the non-state sector also played a large part in the growth of the social hygiene movement. Indeed, it is hard in some cases to separate official from unofficial activities, as observed in King's unabashed promotion of Plunket services whilst a Health Department divisional chief, and in Gunn's promotion of health camps whilst

working for the School Medical Service. Although the term "health" is used to demarcate certain practices from the activities of education and welfare sectors, this period is a prime example of the legitimation of policy process which was discussed in Chapter II. In other words, practices of elementary environmental manipulation gained more ready acceptance because of medical sponsorship.

State Provisions

The practices leading to the enforcement of compulsory attendance at school, described in the previous section, had far-reaching consequences for the improved ability of the state to monitor the health status of children and to provide preventive and remedial services. At first, these state initiatives rested with the Department of Education, which soon gave over the professional execution of medical and dental services for children to the Department of Health. A close working relationship was maintained between the two, cemented by the adoption of the social hygiene ideology as official education policy (AJHR, 1931, E.1: 3) and the Department of Health's view that "physical-training deals essentially with the health of the school child" (AJHR, 1921, H.31: 25). The school system also provided a vehicle for the propagation of health and hygiene ideals. Health studies were taught in the curriculum as part of physical education, and for the first time in 1928 a third year was added to a Teachers' College course to train specialists in physical education and hygiene. This theme is taken up again in the section below on school hygiene.

Conscription of men over eighteen years began in 1916 as the supply of volunteers dried up. The unpalatable findings of the low health status of volunteers and conscripts alike was both a spur and a caution for government and populace, frequently used to emphasise that today's children are tomorrow's soldiers, mothers and workers. The Department of Education's official "Manual of physical education and hygiene" put it this way:

> The medical examination of recruits called up for service during the Great War provided a unique opportunity for an accurate estimate of the physical condition of all men of the country between the ages of 18 and

> 42. As in all other countries actively engaged in the War, so in New Zealand a surprisingly large percentage of these were found to be suffering from physical disabilities and diseases that rendered them unfit to go on active service. In New Zealand all men between these ages were examined. According to their degree of physical fitness these were placed in one of four categories : -
>
> A.- Fit for active service overseas - 34 per cent.
> B.- Fit for active service overseas, only after having undergone some specific medical, surgical or dental treatment - 3 per cent.
> C.- Unfit for active service overseas, but fit for service in New Zealand - 60 per cent.
> D.- Totally unfit for military service in any capacity - 3 per cent.
>
> Hence, of the men examined only one in every three was fit at once to go on active service. And of a third so chosen, what a large number returned in broken health due to their unfitness to withstand active service conditions (White, 1935: 4).

Such evidence gave the state a mandate to invigilate individual development and to supply mass treatments. The Department of Public Health was renamed the Department of Health by the *Health Act, 1920*, and a substantial internal reorganisation undertaken when the services formerly administered by the Department of Education were transferred. The School Medical Service became the Division of School Hygiene, and the School Dental Service became the Division of Dental Hygiene. A Division of Child Welfare was created (with Truby King its first Director), and also involved directly in child health was the Division of Maori Welfare. The new department was a little slow to get under way because it immediately faced a retrenchment owing to a recession (AJHR, 1921, H. 31).

In addition to dental services, children were the beneficiaries of other plant and expertise developed for military purposes. During the year from September, 1920, the Department of Health,

> with the co-operation of the Defence Department, made a start with the treatment of crippled children, for whom in the past it has not been possible to do much effective work. The children have been admitted to the Military Hospitals at Rotorua and Trentham, where at present 120 are receiving treatment, and where, in addition to orthopaedic treatment, they are also provided with educational facilities in special

> schools which have been commenced by the Education Department at both places.
>
> The children affected have been got in touch with by means principally of the various School Medical Officers. Many of the children had had no effective treatment for years, others none at all, and a great number were suffering not only from physical defects but also from lack of education. . . . operative measures alone for the treatment of deformities are futile in very many cases unless they can be followed by effective after-treatment and close supervision of that treatment by a skilled staff. In other words, group or team work is essential for success. This can now be provided, thanks to the development of special orthopædic work during the last war (AJHR, 1921, H.31: 20-1).

The health status of children. The mass surveys described below were the instruments for information and the building of developmental norms, but the question remained of what characteristics were to be studied and what inferences could be drawn from them. Throughout this period, the declared percentage rate of children discovered to have physical defects remained relatively high. It is likely that this reflects the reliability of reporting and a growing coverage of the child population over time, rather than a static condition. The first full year report of the new Department of Health summed up this uncertainty, but against a background of a generally low standard of child health.

> With reference to the state of health of the school-children of New Zealand, this most certainly must be regarded as very much below what it ought to be in a country having such advantages in climate, prosperity, and general welfare. It is true that the average height and weight in relation to age is higher in New Zealand than in England, but more pertinent indices of health are to be found in the state of the teeth, the presence or absence of chest-deformity, anæmia, adenoids, and unhealthy tonsils. . . . Concerning *chest -deformity* , one of the chief manifestations of rickets in New Zealand, one medical officer states: "In my opinion, the percentage of chest-deformity reflects most accurately the general health and conditions of the children, and is therefore of the utmost value in estimating the relative importance of the different factors which go to cause ill-health and physical defects." Another officer says: "it is interesting to compare the result of the examination of children of the entrant class with that of the older children. The proportion of malnutrition is approximately the same as in children of Standard II: physical deformity is rather more frequent. Rickety manifestations appear much too often, especially in a few schools of the poorer areas.

> Thus, in one city school thirty-three out of fifty-eight young children showed physical deformity with rickets as the chief underlying factor" (AJHR, 1921, H.31: 27).

The school medical service examined 78,980 children in the 1920-21 statistical year. An average of 79% was returned for those having a "physical or mental defect of some kind". The most commonly observed defect was dental decay which averaged for all districts at 54.6% of all children examined (decay was recorded for those with carious permanent teeth or more than three carious temporary teeth). That endemic condition apart, deformities of trunk and chest was found present in 23.8%, nose and throat obstructions in 19%, and impaired nutrition not otherwise classifiable, in 7.25% of pupils. The officials were in no doubt as to the causes of this state of affairs. The original report for that year is reproduced here for the insight it gives into the official view of the living conditions of children. The identifiable disadvantage suffered by those aged eight to fourteen years required to work at dawn and at dusk in dairy farm milking sheds is recorded, followed by the disadvantages suffered by city children. Ten "predominating factors" were postulated, and although these might now be summarised as the "failure-to-thrive" syndrome, clearly it was poverty leading to overwork, poor diet and disease which was the root cause.

> The *overworking of children out of school hours,* especially amongst share milkers, not only continues to prove a serious impediment to their school work, but is also associated with a high degree of physical defect and impaired nutrition. In this connection the following conclusions, arrived at by a head teacher during five years of observation of the same set of children, are of special interest: -
>
> > "Standards V and VI (eight girls, two boys): four milkers - average work poor. One defective sight - work poor. Five non-milkers - work good; neat clean and active.
> > "Standards III and IV (four girls, two boys): four milkers - work poor, unreliable, untidy and showing signs of fatigue. Two non-milkers - work quite satisfactory.
> > "Standards I and II (five girls, two boys): three milkers - progress small. Four non-milkers - progress normal.
>
> In nearly every case the mother, in addition to performing house duties, does milking and other hard work outside. Normal children cannot hold their own even if only milking three hours a day. I have proved this

during five years of 'starting the season.'"

> In a preliminary inquiry into the home conditions and diet in twenty-five cases of city children suffering from *malnutrition* and severe physical defects the following predominating factors were elicited: (1) A large incidence of infectious disease, especially measles and whooping cough; (2) want of adequate ventilation in the home; (3) crowded and dirty sleeping conditions; (4) in many cases discordant parental relationship and indifference towards the welfare of their children; (5) in some cases drink is a serious disturbing element; (6) an insufficiency of fresh milk, dairy products, and eggs, milk often being taken only as condensed milk; (7) meat is often of the small-goods variety or tinned; (8) an insufficiency of fresh vegetables, especially greens; (9) an insufficiency of fruit; (10) in spite of comparative poverty, in many cases a good deal is spent on sweets (AJHR, 1921, H.31: 28. Emphasis in original)

Rural children came under close scrutiny again in 1928, when the Department of Health reported on children, this time categorised by the fathers' or family occupation. On average, about a third of all families were categorised as having a financial status which was "doubtful or poor", and opinion about the amount of work expected of children, domestic cleanliness and "efficiency", and general living conditions showed that most farming children were considered to be disadvantaged. Once again, the worst off by a small margin were sharemilkers' children, described as 30% housed in dirty homes, 15% damp houses, with great domestic inefficiency and late meals, and with more than 18% of such children required to work three hours or more each day on farm work (AJHR, 1928, H.31: 29). The picture for the following year was not much changed. Of more than 51,000 examinations, 61% of children were found to have "defects" other than dental caries. Rural children were found to have the lowest treatment rate as it was ". . . evident that parents in remote areas, for financial or other reasons, often find it difficult or impossible to to undertake the necessary journey to the centre where treatment can be obtained" (AJHR, 1929, H.31: 23). The situation got worse during the 1930s and the extent of children's suffering and deprivation during the depression is difficult to measure because of the unreliability of the health surveys. The rigours of the depression and its effects leave no doubt that matters got worse before they got better in the second half of the decade.

Technical advances, drugs, and the introduction of subsidised health care began to show up in improved child health until the next crisis. The Director-General of Health had to report in 1945 that a distinct falling off in the nutritional state of children had been evident from 1940. At first, the effects of World War Two had scarely been evident in children's health status, but rationing, the overall shortages of fresh foodstuffs and expensive wartime prices combined to show a cumulative effect. Confirmation of this state of affairs was found in pre-school age examinations, where 10.34% were found to be malnourished (AJHR, 1945, H.31: 6).

School Hygiene Division. The history of public health in New Zealand is inextricably linked with the state school system. Although legislative sanction to enter schools and to examine pupils had been given to the district health officer and other nominated health officials by the *Public Health Act,1908*, two conditions were necessary before that policy became effective. Children had first to be assembled in schools regularly and in complete cohorts, and then a category of governmental official had to be found to take an interest in this mass of infectious disease carriers. From 1914, the compulsory attendance of children at schools was enforced seriously, and from 1920 the new Department of Health took over the school health service from Education.

It could be argued that bringing children together in schools was the problem rather than a step towards a solution for disease control, but the benefits far outweighed the costs of not doing so. Isolationism was not a policy choice, given that education had become an imperative for modern New Zealand. So, while mass contacts increased the dangers of epidemics, they also increased the epidemiological efficiency of the public health service. Proximity helped to build up immunities and to ensure that the so-called childhood complaints, such as mumps, were survived in childhood. At the same time, preventive aspects of social hygiene were enhanced by propaganda amongst the young, and new patterns of individual and social behaviour were prescribed and transmitted. For individuals with serious health

problems, referral to special facilities such as that described above for crippled children, was only made possible through identification by the school medical officer.

Having aggregated the children, getting them vaccinated and immunised was another matter. McLean, in his history of public health, tended to blame parents for a low rate of diphtheria immunisation during the 1920s to the mid-1940s.

> In 1926 Dr Ada Paterson, Director of School Hygiene, reported that it had been carried out in only a few selected schools and orphanages; and in 1932 the Director-General reported that "unfortunately very little active immunisation against diphtheria is being carried out at present". To a large extent this was *due to the apathy of the parents*. . . . a sharp outbreak of the disease in a particular locality frequently resulted in requests from parents to have their children immunised, but *in the main they are apathetic.*
> During the next ten years several medical officers carried out campaigns in their own districts with the ultimate aim of having all pre-school and school children immunised, *but it was up-hill work*, particularly as the incidence of the disease was falling.
> In 1941, as a departmental policy, immunisation was offered to children below seven years of age thoughout the whole country, but as before *the limiting factor was parental indifference* (McLean, 1964: 356-7. Emphasis added).

Parents may well have played a key part in the rate of immunisation, but in retrospect the position was much more complex than McLean allows for in his sweeping generalisations. Until World War Two, medical science was regarded with a great deal of suspicion by ordinary people; most child-rearing adults of the 1920s and 1930s still remembered their own parents' feelings that hospitals were places where people went to die. Most importantly, doctors and hospital care cost money or the loss of self-esteem through means-test interviews, as one person recalled of Depression times: "If you were ill you didn't go to hospital unless you went through the whole rigmarole of how much money have you got and do you keep a canary" (Simpson, 1974: 135).

The incidence of tuberculosis reinforces that interdependence between

the school system and the public health service which is being stressed here. McLean's account of the beginning of investigative health work in schools and the development of supervision and treatment is reproduced in full because it demonstrates so forcefully the new practices affecting all school children.

Tuberculosis Among School Children

In 1926 an interesting investigation was made by Dr Mary Champtaloup (AJHR, 1927, H.31) to determine the incidence of tuberculosis among school children. Some 1,268 children in the Wellington and Canterbury districts were given the Moro percutaneous test, and those showing a positive reaction were further investigated by X-ray examination and clinical examination by a chest specialist. Both town and country children were tested ranging in age from five to 15 years.

After the X-ray and clinical examination of the positive reactors two children were found to have pulmonary tuberculosis, and were admitted to a sanitorium. A small additional group were put under close observation for a lengthy period with regular weighing and periodical clinical examinations.

This undertaking is of interest as being the first group investigation made in this country for the early detection of the disease. The proportion of active cases discovered was 1.5 per 1,000 of the total tested. The investigation, moreover, marks the beginning of an increasing interest by the School Medical Service of the Department in the whole question of the health of children in relation to tuberculosis, which was inspired and guided by Dr Ada Paterson, Director of the Division of School Hygiene.

Supervision of Child Contacts

From 1928 onwards the School Medical Service paid increasing attention to the search for early signs of tuberculous infections in children, with special emphasis on children coming from homes where they were exposed to the risk of infection from a case of the disease. These homes were periodically visited by a school nurse, and advice given concerning a suitable diet, satisfactory sleeping accommodation and adequate hours of rest.

This work started in a small way, but was gradually extended and developed, and by 1934 Dr Paterson was able to report that over 1,700 child contacts in six health districts were being supervised in this way. In Wellington in 1934 the school medical officer, Dr Helen Bakewell, reported that 620 child contacts in 318 families had been under close supervision during the year. 700 visits had been made to homes by

> nurses, and 355 children had been referred to the tuberculosis clinic at Wellington Hospital.
>
> With the development of tuberculosis clinics this supervision of child contacts was extended, and it became standard policy for school nurses and district nurses to devote a substantial proportion of their time to this class of work (McLean, 1964: 368-9).

Thus, in the space of about thirty years, children at school sprang into prominence as targets and beneficiaries for new practices in social hygiene and disease control. Most significantly, the school medical service and the allied public health nursing scheme developed as state instruments to report on the health status of children so that corrective practices could be introduced. This new industry also created tasks for itself other than simply disease control especially in the areas of health education and research. Five yearly physical development surveys were introduced to provide sets of age-related developmental norms for research (Department of Health, 1982). Amongst other uses, those data have commercial applications for the manufacturers of children's clothing and footwear.

School Dental Service. A combination of natural mineral deficiencies and poverty meant that New Zealand-born Pakeha generally suffered a low standard of dental health. "The number of children with perfect sets of teeth is probably not more than 2 or 3 per cent." was the official opinion in 1921 (AJHR, 1921, H.31: 25). A deputation of community leaders had waited on the Minister of Health in 1917 to seek action on the poor state of children's teeth. Speaking in the House, the Minister promised that ". . . the dental plant of the military camps would be presented to the Education Department, for the equipment of State dental clinics, for the treatment of school children after the war (NZPD, 1917, 178: 473). Set up in 1919 under Education, the service comprised six dental surgeons practicing in main centres when it transferred to Health in 1920. A unique venture in the form of school clinics staffed by "dental nurses" followed in 1921, when training schools for those nurses were established. This was not accomplished without public and professional controversy, but the Dental Association was won over, and within eight years

the clinics attached to schools were serving half of the pupils of primary schools. Dental caries and associated complications remained the single greatest classifiable health defect (AJHR, 1929, H.31: 23), and although preventive dentistry and dental education improved matters considerably, it was by 1945 still rare to find a child's teeth in what could be called excellent condition (AJHR, 1945, H.31: 6).

As a policy matter, it seems likely that the greatest support for state dental care for children lay in the medical boards' findings on the dental health of World War One volunteers and conscriptees, and the clamour for rectification.

Milk and apples. Supplementing children's diets with food provided at school has a long history in Europe. Sometimes food was supplied as an inducement to attend, usually it represented a charitable gift, and always it symbolised a community investment in children (Bridgeland, 1971: 55-6; Pinchbeck and Hewitt, 1973: 418). Such practices have not been widely evident in New Zealand although private charitable donations of milk to city school children began in New Zealand in the 1930s. For example, Walter Nash, the Labour M. P. for Lower Hutt, was instrumental in setting up one scheme in his electorate by

> . . . organizing a free issue of milk daily to the children of Randwick School, who a medical officer of health said were the most undernourished in the country. A former mayor of Lower Hutt, Sir Alexander Roberts, agreed to pay for the milk and Nash arranged for a local farmer to supply it. Dan Sullivan organized a similar system in Christchurch. In the House, Nash quoted Department of Health statistics that over 600 children in 10,000 were suffering from malnutrition and urged that milk should be freely available to the whole population. In 1935 and 1936 the government began to subsidize free milk issues to school children generally (Sinclair, 1976: 87).

The milk-in-schools scheme was made nation-wide in 1937, providing every child with a free, half-pint bottle of pasteurised milk each school day. As typhiod fever from untreated milk was still a periodic hazard (McLean, 1964: 254-5), it was pointed out that this ". . . not only greatly improved children's

nutrition and growth but also led to the setting-up of pasteurising plants which became the nucleus of safe local milk supplies" (Sutch, 1969: 233).

> The total number of pupils in the milk-in-schools scheme in 1943 was 235,361 (an increase of 523 over the previous year), representing some 84 per cent. of the school population. The totals of pasteurized bottled milk, milk for cocoa-making purposes, or malted milk are made up as follows:
>
> | | Pupils |
> |---|---|
> | Pasteurized bottled milk | 222,098 |
> | Malted milk | 8,234 |
> | Milk for cocoa | 5,029 |
> | | 235,361 |
>
> (AJHR, 1944, H.31: 8)

That school milk was also a tactic to provide income for the dairy industry, and a way to redistribute resources while supporting private enterprise, are points also implied by Sutch, who was the chairman of the original organising committee. Commenting on the abolition of the scheme in 1967 as part of a governmental cut-back on spending, he thought the producers as much the losers as the children (1969: 346).

A further example of maintaining productivity through state purchase of food for social investment occurred soon afterwards. Children were the beneficiaries of surplus apples when the shipping crisis of World War Two cut off the British export market. The job of organising the purchase and distribution of free apples to schools was given to the government milk officer in 1941. During 1944, free apples were supplied in the apple season to pupils attending all types of schools. Approximately 92,000 cases of apples were supplied over an eight-week season (AJHR, 1944, H.31: 8). The following year 103,000 cases were distributed over a twelve-week season (AJHR, 1945, H.31: 12). The scheme was abandoned after the War (Sutch, 1966: 186).

Child health benefits. Despite the burgeoning attention given to children by the Health and Education authorities, for most of this period from 1914 to

1944 children had no special privileges as patients of the free-enterprise health service. This resumé makes that plain:

> Prior to the passing of the Social Security Act, 1938, New Zealand had no nation-wide plan for prepaid medical or hospital services. It is true that voluntary groups such as friendly societies levied their members for this purpose, and by arrangement with doctors and with hospitals were able to offer free or partially-free medical and hospital treatment. Only a relatively small proportion of the population had taken up the friendly-society movement. For the rest each made his own arrangements and met his own costs for medical and hospital treatment as and when the need arose. Doctors engaged in individual practice and sought their fees entirely from their patients. Public hospitals provided hospital services and charged the patients at rates varying with the type of institution and the ability of the patient to pay. Private hospitals, as at present, gave only hospital maintenance and nursing care. For the completely indigent and those in straitened circumstances private doctors afforded a measure of free treatment, and Hospital Boards, in exercise of their charitable functions under the Hospitals and Charitable Institutions Act, gave hospital treatment and other forms of relief, either free or at a reduced charge, in keeping with the patient's financial circumstances. Such free treatment or partially- free treatment at the hands of either doctor or hospital was not obtained as of right: the patient was dependent upon the charitable disposition of doctor or hospital and upon his ability to demonstrate by means test that he was unable to meet the usual fees.
>
> Public hospitals, with their superior equipment, diagnostic and other facilities, were regarded, and quite erroneously, as places for the treatment for the poorer classes of patient. The well-to-do preferred to receive their medical attention in the licensed private hospital (Social Security Department, 1950: 126).

In addition to the public health advances made by invigilating and remedying children's diet and hygiene standards, towards the end of this period a form of free or subsidized national health service was introduced by the first Labour government. The scope of the *Pensions Amendment Act, 1936*, and the *Social Security Act, 1938*, and their income provisions for children were outlined earlier in this chapter. The later Act provided for a range of health benefits, and for regulations empowering payments for maternity care, pharma- ceuticals and supplementary benefits to cover X-ray, home nursing, laboratory tests and similar services. From July, 1939, all public hospital

in-patient treatment became free and a subsidy paid to licensed private hospitals by the state. In the case of children, this subsidy was extended to the Karitane baby hospitals

> . . . conducted by the Royal New Zealand Society for the Health of Women and Children, more commonly known as the Plunket Society. In these Karitane hospitals full benefits at the rate of 9s. per day are now payable in respect of both baby and the mother where the latter is admitted upon the recommendation of a doctor in the interests of the baby (Social Security Department, 1950:135).

The continuing confrontation between the Labour Government and the British Medical Association, New Zealand Branch, over the question of "socialised medicine", delayed many ambitions of the politicians. Many disputed items ended in compromise arrangements and some ended with no agreement at all (Lovell-Smith, 1966). Wrangling with the BMA meant that many of the health provisions envisaged were not enacted until the 1940s.

Maternity care. There was a steady improvement in the chance of surviving at birth. The first Inspector of Maternity Hospitals, Dr T. L. Paget, was appointed to the Department of Health in 1924. Paget proposed that maternity wards be separated from general hospitals and that a high standard of asepsis be maintained through specially trained nursing staff. Although a pattern of cyclic virulence in peri-natal diseases is evident, from 1927 the rate of maternal mortality dropped rapidly. Ante-natal clinics were established in 1924 under the tutelage of Dr Elaine Gurr, and by 1936 attendances at the 39 clinics operating represented 28% of all expectant mothers (McLean, 1964: 305-6).

After one false start, all phases of medical care for maternity patients were made universally free in 1939. The Social Security Department ventured the opinion that the maternity benefit was the most popular of all benefits, and it coyly noted in its review "There are possibly few financial contingencies which bear more heavily on the young family man than the medical and hospital costs associated with an addition to the family" (Social Security Dpartment, 1950: 129).

Children, the state and the health ideal. State intervention in health was hastened along by a series of crises in the first quarter of the new century. The impetus was not from further epidemics of disease, or problems in recruiting a fit expeditionary force, but the new-found confidence that such events were both preventable and remedial. Sponsorship by a maturing medical profession was influential in promoting services for children that covered a wider concept of health than just physical well-being. By this time, medical practitioners had effectively "closed shop" against the practices of appointing lay health officers to area health boards. The era of the medical expert was emerging, and the profession was prepared to take its share in governing children at home or at school. When that authority was backed up the state, as was the case with the school health service, it became a formidable crusading power.

Transfer of power from parents to doctors and teachers as state agents created more dualism in children's rights. On the one hand, when health professionals saw no conflict of medical ethics in dealing with children as objects to be manipulated, it meant further erosion in children's rights. Children were powerless to resist intimate body searches, mass examinations, mass treatments, and the stigma of being singled out for defects of health or hygiene. On the other hand, that abrogation of these individual rights led to an increase in the universal right to protection from disease.

Non-State Activities

Children's health camps.[4] The Health Camp Movement, as it came to be known, had its origins in a series of annual camps, the first held in 1919 at Turakina, near Wanganui, and organized by Dr Elizabeth Gunn, a school

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[4] The events detailed in this section, as in Chapter VII, are taken primarily from the *Report of the Committee to Review the Children's Health Camp Movement, 1984.* A first-person account by my friend Pat Hanley of a stay at Otaki health camp in 1938 is given in Keith, 1985: 215.

medical officer of the Department of Education. Dr Gunn had a wager with the Annbank run-holder, Mr B. P. Lethbridge, that given the right conditions, she could demonstrate a marked improvement in the health of city children within four to five weeks. Lethbridge provided the camp site, meat and vegetables, and conceded the wager by allowing use of Annbank as an annual health camp until his death in 1930. The Gunn camps were run on para-military routines, emphasising regular wholesome meals, organized physical activity, compulsory rest periods, and regimented, open-air living. Their principal aim was to reduce malnutrition and the risk of tuberculosis in children (See Maclean, 1964, who put the subject of health camps into his chapter on the history of tuberculosis).

The idea was quickly taken up in other centres, and over the next ten years summer camps were run by various voluntary associations. A source of funding for these camps was found through the sale of "health stamps" by the Post Office. Stamps carrying a one-penny loading for charity and the slogan " Help Stamp out Tuberculosis" were first sold in 1929, and varieties of stamps benefitting the Movement have been issued every year since then.

The Department of Health became officially involved in health camps in 1931, although each local organizing group retained its independence. The first permanent health camp was established at Otaki in 1932. Over following years the Auckland Community Sunshine Association held monthly camps at Motuihi Island continuously for twenty-eight months. Gradually, the camps spread throughout each Island, located mainly in rural sites favoured for their climate. The National Federation of Health Camps was formed in 1936, and in 1937 the Government helped set up the King George V Memorial Fund Board, specifically to assist the Federation with the capital costs of permanent camps. By 1946, ten permanent camps were in operation at Whangarei, Auckland, Port Waikato, Wanganui, Gisborne, Otaki, Nelson, Christchurch, Roxburgh and Invercargill. The Department of Health took over responsibility for programme and staffing, and the former policy of rest and sunbathing was altered to include projects under occupational therapists. Tens of thousands of children attended these camps over the years, with priority to those showing physical deficits. In

this fashion, society could remedy some of the penalties suffered by poor children and preserve its investment in human capital.

The Plunket Society. During this period, Plunket went from strength to strength. At its peak, six hospitals for the care of the new-born frail were operating and well-baby clinics were supported by local associations in most towns. From those clinics, domicilliary services were offered to all mothers of infants, and there were few children of those times who were not subject to periodic scrutiny by the Plunket Nurse. In addition to the guidelines on infant care printed in the developmental log book issued for each child, Plunket promoted the Truby King philosophy of child rearing through sales of his books on infant and child care. This growing coverage and influence of Plunket led to at least one attempt for it to take over invigilation of the substitute care of children. It was reported that without consultation with his Child Welfare Branch the Director of Education actually agreed to the transfer of functions empowered by the Infant Life Protection legislation, from Education to the Health Department, there to be run in conjunction with the Plunket system. Sub- sequently, Beck wrote that

> . . . it was not until the annual conference of the Plunket Society that I found quite by accident that the proposed transfer was included in the agenda, and was actually under discussion when I arrived. On being given permission to address the conference . . . [and] After hearing my statement, the conference decided that the proposal was not feasible (Beck, 1950: 27).

The Crippled Children Society. This society was inaugurated in 1935 as a project of the Rotary Clubs of New Zealand. Its foundation is attributed mainly to a call by medical people for the public to be aware of the need for better rehabilitation services for the handicapped. Public consciousness of the extent of the problem and the promise of new medical methods, however, came at the height of the Depression so that there was little chance that government would make provision for new services when existing ones were being retrenched.

Rotary took the lead by establishing local committees, and within ten years

there were active branches in all main centres, providing services to children well beyond those envisaged by their medical sponsors. Although ostensibly a health service, a broad view of that concept was taken, and the tasks of field officers included everything necessary for the total welfare of their clients (Carey, 1960: 6). That mission remained the focus of the Society's work: from a movement to provide for children in the absence of state provision, it developed into the largest voluntary organisation in the country, and the principal non-state service provider to physically disabled children (Carey, 1960).

As Oram pointed out, "Many voluntary organisations are concerned with helping people who are physically or mentally handicapped, or with promoting good health" (1969: 192). This was especially apparent in those which were founded during this period, and it is explained partly by the widespread promotion of environmental health and personal hygiene by the medical profession, and partly by a demand to fill gaps in health and support services.

CONCLUSION

The practices governing the lives of children at the end of World War Two in 1945 were widely divergent from those which had been evident prior to World War One in 1914. This new phase of rights for children went beyond the simple notions of rescue and protectionism which had characterised the end of the nineteenth century. With the recognition that stunted infants became unproductive adults, it was neither sufficient to legislate against the abuses which threatened and frequently shortened the lives of children nor effective to leave the nurturance task solely to families. What had been demonstrated in the early part of this century was the failure of poor parents to be able to provide for their children an environment for minimum sufficient growth and development. Additionally, the scientific and popular debates over the contributions of heredity and environment to optimal growth were beginning to favour the idea

that a good environment could help a healthy constitution realise its fullest potential. Reinforcement of these emerging points of view was provided by retrospective analysis of the twin crises of World War One and the Influenza Pandemic of 1918. Thus, the state moved from a position of being merely the protector of children to be the protector, the regulator and the provider. It not only proscribed what was not permitted to be done to children, but it also prescribed an ideal standard of child care which would lead to an ideal type of adult. In a metaphor which saw children as the seed, or raw materials of society, those adults formed the fruit, or return, of the state's investment in social capital. The distinction between public and private benefits became blurred. Where collectivist action was called for to secure a public benefit, the state was now prepared to step in. Hitherto, there had been a feeling that such actions encroached upon family autonomy and, even worse, that public money was spent on individual gains. The principal instruments for this interventionist approach were the administrative areas of welfare, education and health. The contribution of each of these and their interrelationship is summarised here.

This was the era when "welfare rights" were first invested in both worlds of childhood. On the one hand, there was a significant change in the practices which affected only children who came to official notice, what I have called the "child welfare" sector. On the other hand, there was an extension of social security principles to all children, involving changes of legal capacity and the introduction of state benefits specifically for them.

It is probably fair to assume that most, if not all, of the reforms made in child welfare practices in this period can be attributed to the initiatives of John Beck, the first Superintendent of Child Welfare. He had a keen sense of what constituted justice for children, and was an opponent of the brutalising and stigmatising industrial schools, which he effectively dismantled by administrative cunning some years before they disappeared from the statute books. The course of those reforms were guided by his desire to humanise, normalise and centralise the child welfare provisions of the time. By the end of the day, he had not achieved the introduction of all the innovations he proposed, but the

core of the "Beck Plan", first mooted as an official working paper in 1920, was an administrative and philosophical blueprint which remained operative in substantially the same form for over fifty years.

The administrative innovations made for the care of both dependent and delinquent children tended to obscure the fact that the law governing such children was not a separate and comprehensive juvenile code but a hotch-potch of general legislation adapted for a separate jurisdiction. Worse still, the paternalism inherent in the Child Welfare Act,1925, actually limited children's rights to a fair trial through the infamous s.31 provision which allowed the children's courts to treat all offenders as care and protection cases and removed the need for the charge to be heard and proven. This episode, together with others in this period, is a classic example of how remedies which may seem appropriate and well-meaning can in time come to be seen as injustices and the root of civil disabilities suffered by children. Some real gains were, however, made in the area of removal of discrimination. The most far-reaching of these was the end of the disbarring rule against illegitimate children as dependents of social security beneficiaries or as eligible orphans in their own right.

The practices which most improved for the better the life chances of the "first world of children" were those of the health system. The prime observation to make about these innovations is that although they were owned by the medical profession and sponsored by the state Department of Health, they largely represent advances in welfare rather than scientific medical technology. That is not to undervalue the benefits of new drugs and clinical treatments, but rather to point out that community health is about optimising a healthy environment. Problems of malnutrition, contagious diseases and general debility stemming from the poverty cycle became in the 1920s and 1930s respectable areas of investigation as they became "medicalised". The best example of this trend is illustrated by the health camp movement. Then, as now, children labelled as in need of environmental therapy were not sick in the accepted sense of the word, but were the victims of poverty. It is a similar

criticism that Olssen makes of the Plunket Society well-baby service which, together with other developments, caused the family to lose ". . . much of its responsibility for the health of its members and the care of the sick" (1981a: 261). Indeed, all the major charitable institutions founded in this period have a medical flavour or association, the most notable of which was the Crippled Children Society.

Educational advances were considerable during this period. The foundation for a special education system was laid down through the centralising and rationalising ambitions of John Beck. Most importantly, the elitism of secondary schooling was diminished by changes which ensured that all children could have at least some time at that level, and that most children would have a substantial period.

The school system was the pivot upon which the success of other state practices rested. That interventionism in welfare and in health-related areas would have been impossible without the provisions for enforcing the compulsory attendance of children at school. It was no longer necessary for the state to intrude into the privacy of the family home because all children were now subject to school-day inspection by teachers as agents of social surveillance. Similarly, given the recognition of the important part that child-hood health and hygiene could play in preventive public health, the advances which were made in identifying, treating and controlling hitherto commonplace infectious diseases (and nuisance conditions such as body lice) would have been impossible without the introduction of compulsory schooling. Finally, the school system itself became the self-actualising vehicle for the moulding of the New Zealand character, and the inculcation of the national imperatives of patriotism, conformity and achievement. By World War Two, mobilization into the services was for males little different from being drafted into yet another school.

The central gain in rights for children during this period can be summed up as guaranteed state paternalism in the welfare area. A quality of dualism is

apparent, for as access to health, education and welfare shifted to become implicit rights, thus favouring most children for the better, questions of children's rights to consent to examination and treatment were abrogated. The more the state intervened, the less children were able to resist its power. For all children there grew the societal expectation of a good diet (not achieved during World War Two), the early prevention of disease, access to medical services and equality of access to education. For children at risk, there was the guarantee that the state would search them out and offer remedial parenting, and thus contribute to the common good by forestalling social decay and contamination. Towards the end of this period, the claims that the inner world of childhood deserved equal attention with bodily development gained more credence and a new fashion of explaining and shaping children's behaviour influenced the new methods of governing children dealt with in the next chapter.

CHAPTER VII

FROM SOCIAL CAPITAL TO PSYCHOLOGICAL BEING, 1945—1968

The liberating effects of the end of World War Two and the economic spurt which followed led to a period of rapid social advances. Children were especially affected through the growth of new ways of explaining behaviour and a diversity of psychological-based therapies. This period saw the introduction of new cadres of state servants to intervene in the lives of children and a re-making of the professional skills of existing control agents. Hence, I group these new government practices under the slogan "The guiding state". The keynote was growth—in all spheres. The birth rate soared and welfare, education and health provisions expanded apace with the "baby boom" (Gilson, 1970: 60).

What happened in New Zealand had parallels throughout the Western world.[1] A part of the recovery from the Great Depression and World War Two was the introduction of the welfare state. The social contract changed to an expectation that the state would assume the risks which used to be covered by private and family efforts. At the same time, the rise of the *ideology of welfare*, or *welfarism*, called for an efficient state machine, so that the further bureaucratisation of the state was advanced.

As industrialisation grows, it creates a demand for functional differentiation of tasks. The connections between the rise of the welfare state in New Zealand

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1 To inform this argument I have adapted some of the ideas of Wilensky and Lebeaux whose seminal work *Industrial society and social welfare* (1965) provides a plausible description, if not a full explanation of the welfare transformation.

and the portrayal of children as psychological beings can be expressed in the three interrelated propositions which follow.

1. Industrialization caused the problems which the welfare state is designed to remedy and creates the wealth to support welfarism. The basis of giving and taking help is changed from the the local, the personal and the charitable impulse to a system of "caring for strangers" (Watson, 1980).

2. Control is exercised through centralised bureaucracies which foster increasing specialisation of function. Knowledge and technology begin to expand at exponential rates, and credibility is maintained by the employment of experts, which in turn creates and sustains knowledge and information industries. In the social service world, client access and information become central roles of the workers who are ". . . among other things, a guide through a kind of civilised jungle, made up of specialised agencies and service functionaries the citizen can hardly name, let alone locate" (Wilensky and Lebeaux, 1965: 14).

3. The scientific "explosion" of the twentieth century brings about new and "scientific" approaches to the study of human behaviour. A child study industry is created. This leads to the belief that if behaviour can be explained, parents, caregivers and teachers are be instructed on the sufficient conditions for optimum physical and mental health. In the case of abnormal development, treatment technologies are designed and delivered through experts trained in such methods.

These three propositions are used in this chapter as the basis for constructing a history of the policies and practices which materially influenced the lives of children after World War Two. For reasons that are argued in this chapter, the direction for the governing of children in post-war New Zealand changed course to take account not only of children's bodies and environments but also of their psyches and their characters. It was the application of a fundamentally secular theology which abandoned deservingness as a criterion

for saving children. This is not to say that former assumptions, such as that of Truby King about the connection between infantile experience and adult behaviour, were disregarded. On the contrary, added to the belief that training led to character was the idea that if the causes of behaviour could be understood, then lives could be shaped and guided at any stage. What was at stake was the adjustment of the child in the social situation; adjustment was more desirable than attainment, and self-fulfilment replaced the obligation of duty. This was the time when the *psychotherapeutic ideal* (defined in the glossary of terms) came into its own.

Using bold and unfamiliar theories, the social and psychological sciences studied children more closely than ever before. Foreign intellectual concepts which from 1914 had suffered the same wartime patriotric disfavour accorded common foodstuffs and commodities with alien names—amongst other changes, New Zealand-made "German" sausage and "German" biscuits were renamed "Belgian"—were once again permissible imports and taken up with a liberated vigour (Keith, 1984: 264). Ideas, such as pre-school education, which had been rooted but never flourished in the austerity of the 1920s and 1930s, were allowed to bloom under the new prosperity. Psychological studies of children modelled on the American approach introduced a paradigm which emphasised such notions as development of the ideal self in childhood, emotional responses and moral ideology (Havighurst *et al.*, 1954) and the study of national character (Ausubel, 1960). Delinquency was rediscovered along with a confidence that experts would divert that energy into socially cohesive outcomes. By the end of this period, those experts had created a firmly entrenched therapeutic state. The rise in New Zealand of social casework, one of those nascent vocations described below, was observed by Rae in these terms:

> The casework approach to social service involved interviews, visits to see the client (as he came to be called) in his home environment, investigations of all other aspects of the case, followed by careful assessment to determine the appropriate action. Clearly this kind of social work has developed as sociology and psychology have given greater insight into individual and family growth, development and

relationships and, as will be seen, further dramatic developments followed the acceptance in the 1960s of the new psycho-therapeutic techniques developed in Europe and America. In the meantime social work was clearly established and accepted as a profession. In 1951 there were 22,000 social workers in England and Wales, representing at that time, as Lady Wootton has noted, 'slightly more than one social worker to every two barmen or barmaids'. Developments in New Zealand were a decade or so behind those in Britain, and on a much smaller scale (Rae, 1981: 92).

That slow start for the helping professions was observed by one British visitor in rather stronger terms. Dr David Mace, doyen of the Marriage Guidance Council of Great Britain, had this to say following a tour of the country in 1956:

> New Zealand is a country of strange contrasts. It has done outstanding pioneer work in several directions, but in other ways it is peculiarly backward. It has virtually no trained social workers and extremely meagre resources for their training. It has virtually no psychiatrists with qualifications comparable to those that are required in Britain and the U.S.A. There is practically no teaching of dynamic psychology, or realisation of its importance (Mace, 1957).

THE SOCIAL CONTEXT

The picture which I attempt to portray of relationships between the state and children in the period 1945 to 1969 is at some variance with that drawn by Dunstall (1981) in his description of the pattern of New Zealand society for the period. Dunstall saw marked changes in the context of material life and described the two decades after 1945 as characterised by "Unsurpassed prosperity and social tranquillity", and ". . . in the social fabric, elements of continuity were as pervasive in the 1970s as they were in the 1940s". I will argue in this chapter that in the case of children, the twenty-five years from 1945 marked a period of distinct *discontinuity*; practices in the governing of children changed in such a way as to be never the same again. Expanding that continuity theme, Dunstall went on to say that:

> The Second World War, at the beginning of the period, had few long-term effects in demographic and material terms. It claimed the

> lives of 11,625 New Zealanders, and a further 17,000 were wounded, but civilian life and property was largely unharmed. Over 150,000 men were in the armed forces at their peak in September 1942, and the civilian population came to know blackouts, sirens, fire watching, army parades and fund-raising campaigns. But the basic social pattern was disrupted only temporarily. In many respects the war merely accentuated the uniformity and drabness of life inherited from the depression of the 1930s.
>
> From the 1940s, however, a number of long-established processes accelerated. Population growth, fertility transition, urbanization, and the development of a white collar society helped to bring a new distinctiveness and complexity to New Zealand society. The social pattern developed an indigenous flavour (Dunstall, 1981: 397).

At the very least, we reach agreement that the post-war period was one of accelerated growth. Moreover, what I have said above and will argue extensively below supports Dunstall's view that the "technocrat", an expert with a formal qualification for a particular job, was increasingly a phenomenon in the era of expanding bureaucracies (1981: 412). With the raising of the school leaving age in 1944, a secondary education became nearly universal, while the number of adults who had had a tertiary education began to rise rapidly. Added to wartime exigencies, these changes altered the way in which young persons were perceived as part of the work force.

Legal Capacity

One of the most far-reaching changes was the raising in 1961 of the age of criminal responsibility from seven to ten years. Since 1893, New Zealand had followed the British approach of not arraigning children under the age of seven years on the grounds that they could not differentiate right from wrong and, therefore, could not be held to have "guilty intent". Also in 1961, traffic offences ceased to be dealt with by the Children's court ". . . except for more serious offences normally punishable by imprisonment [for adults]" (AJHR, 1962, E.4: 4).

School military cadet corps, which had from the turn of the century required

adolescent males to undertake military training at schools, were finally separated from the armed forces in 1971. The age for peacetime conscription of young adult males for military service was raised in 1964 from eighteen to twenty years, and a balloting system introduced to reduce the intake to about one fifth of those fit and eligible, or 3,000 men out of a potential 15,000 per year(NZOYB, 1965: 264). An amendment to the *National Military Service Act* in 1968 reduced the age to nineteen to preserve that ratio (NZOYB, 1972: 260). Conscription was phased out from 1974 (NZOYB, 1975: 261).

Dependency. Extensive changes to the relations between parents, children and the state were made during this period. The new practices most influential upon the lives of one section of children were those provided in the *Adoption Act, 1955*. A full discussion of this legislation and its consequent practices appears later in this chapter, but attention is drawn here to the decision of the state to insist, and assist, in turning adoption not only into a "legal fiction" (Webb, 1979: 6), but also into a conspiracy to hide from children their true identities.

A further area of influential changes lay in more permissive attitudes to divorce and separation, and the consequent new practices for guardianship and custody. New Zealand had led the British Commonwealth in women's rights and marital equality, as they did during this period.

> Access to divorce was again improved in 1953 (Divorce and Matrimonial Causes Amendment Act) when those couples who had been living apart without the benefit of either an order or an agreement for separation were also able to dissolve their marriages. For the first time, the law then conceded that marriage breakdown occurred whether or not the legal grounds for termination were available. Additionally, the law no longer allowed one partner to prevent the other from terminating a marriage which had broken down. Thus by 1953 society had found it desirable to provide mechanisms whereby *de facto* separations could be incorporated into the legal framework of remedies. Subsequent legislation (Matrimonial Proceedings Act 1963, Matrimonial Proceedings Amendment Act 1968) further extended the earlier reforms and made divorce legally accessible to all who wished to dissolve their marriages although some still found it necessary to 'manipulate' (Stetson, 1975) the grounds (Lloyd, 1978: 144).

Lloyd, following the research by Webb (1977), goes on to point out that in the post-war period not only were more couples divorcing, but also more couples with children sought divorces than in the past (1978: 150). It was, therefore, not unexpected that the state would begin to take a closer interest in the rights of children in matrimonial disputes. The generally improved civil rights of married women helped in this regard.

> As the result of a long and very interesting process, which was principally effected by equity and by various statutes and which culminated for all practical purposes with the enactment of the Law Reform Act of 1936 and the Married Women's Property Act 1952, married women have, like other women, become emancipated. They may now hold property of their own, just as if they were unmarried, may sue and be sued independently of their husbands, both in contract and in tort, and they may be made bankrupt (O'Keefe and Farrands, 1975).

In custody and guardianship disputes, considerations of fault and character assumed lesser importance than continuity of adequate mothering. By a combination of these new practices, economic liberty and social mores, the unassailable position of fathers as guardians which had obtained in the 1850s had by the 1950s almost completely reversed in favour of mothers, especially in the case of young children. Magistrates and judges adjudicating in custody disputes came to be influenced by the "mother principle" (O'Reilly, 1980: 4).

Employment. The economic dependency of young persons was altered by the raising of the school leaving age to fifteen in 1944. The buoyant post-war economy and full employment led to a softening of attitudes towards children and young persons in the work force, and in turn to accommodation by the education system especially at the tertiary level. In short, labour was in high demand for the two decades from 1945 and a reserve labour force of children and students was mobilised to fill the need (Ebbert, 1984: 40). From his studies into school-leaving age practices in rural and urban communities in New Zealand, one American researcher commented:

> At the best of times farming is difficult, and since the last war, with full employment in the cities, farm labour, always scarce, is scarcer than

before. Indeed, the modal farm is one where the farmer carries on with a grown-up son and the younger boys who lend a hand during school holidays. It can be said, however, that these men believe in education for their sons and daughters. But today prices are good and farming pays. The boys would do well to stay on the land; there is not the incentive to stay at school and escape in the Public Service or one of the professions (Havighurst *et al.*, 1954: 8).

Similarly, in the cities full-time and part-time work was readily available at good wages for young people. Clearly, because exploitive work was offered less than in the past, and because of *embourgeoisement* , the "white collar" process (Dunstall, 1981: 406), which restrained working-class families from putting their children to demeaning work, the welfare authorities were now less concerned with invigilating those practices. From considerable interest in child labour during the 1920s and 1930s, the Child Welfare Branch took very little interest in the subject from the 1940s, and the topic disappears entirely as a separate theme in annual reports (AJHR, 1945, E.4, *et seq*). Except where frank abuse or juvenile offending was involved, Child Welfare left the matter more and more to the Department of Labour to be treated as a civil matter rather than as a welfare issue. Children and young persons were present in the work force in greater numbers than at any time in the past.[2] In turn, this demand for labour had several unintended consequences. It almost certainly influenced the continuation of the practice for New Zealand to have the lowest permitted motor drivers' age in the developed world; this was led by the rural lobby in

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2 The author had his first part-time job in 1950 at age twelve and, from the age of thirteen and a half to leaving high school at eighteen, worked for a department store chain part-time every working day and full-time during vacations. The exceptions were the summer vacations of 1953, 1954 and 1955 when—first at age fifteen—he worked under adult conditions on the slaughter floor of a freezing works. In all cases, his immediate supervisors knew that he had overstated his age but were prepared to accept physical maturity as evidence of ability to do the job and with little fear of being prosecuted by Department of Labour inspectors. At university, part-time study was the norm. Compare his experience of the 1950s with that of his parents in the 1930s and their inability to get paid work of any type, and with that of his adolescent sons in the 1980s who, after some years of active job-seeking, were eighteen before they earned their first part-time pay packet (OHMF).

particular, where driving competence was not only economically rewarding but also oftimes literally a matter of life and death. It helped to forestall moves to raise the school-leaving age. Most of all, it facilitated a "youth culture", a new world in which free-spending young people with much of their income disposable rebelled against social conventions and mores with greater vigour than had been seen since the so-called *larrikins* had terrorised Otago around the turn of the century (Olssen, 1984: 143-5).

THE GUIDING STATE

This section describes the growth of the psychotherapeutic ideal within the state-sponsored activities of welfare, education and health from the end of World War Two. It then goes on to consider three developments in particular: the "problem" of juvenile delinquency and the associated rise of a youth culture, the new policies for the day-care of infants, and the new policies introduced in adoption. To set the scene, an extract from the annual report of the Child Welfare Branch, which encapsulated the mood of the time (dated twelve days after VE Day), is reported here. In writing about the value of preventive work, the Superintendent described this work as being divided into a psychological approach and a social approach. The latter was defined as the alleviation of unsatisfactory "social conditions", sometimes through financial assistance— the "Needy Family Scheme" as it came to be called. The psychological approach, on the other hand,

> . . . is concerned mainly with the individual child or the family unit, and the co-operation of numerous outside agencies is utilized in an endeavour to bring about a satisfactory adjustment. It is very often possible to keep the child from committing offences, and in this way the need for Court appearances is avoided. . . . With the Department's policy for the development of preventive work, including the gradual expansion of the service of clinics throughout the country, the number of children appearing before the Courts should steadily decrease. At present the services of qualified persons attached to University colleges and of psychiatrists attached to the mental hospitals Department are available and freely utilized in both our preventive and our Court work. There is, perhaps, a tendency to regard the

> psychological method as symptomatic of a "sentimental" approach to the problem of the "bad" boy. Far from this being the case, such methods have proved their worth in New Zealand and elsewhere and have led to better co-operation on the part of parents, and subsequently to their better understanding of the real needs of their children. . . . much valuable preventive work will be done in the important early formative years of the child's life . . . Too much stress cannot be laid on the needs for parents and teachers to recognize the symptoms of incipient maladjustment in any child under their care (AJHR, 1945, E.4: 7).

Given the picture drawn by the English expert Mace, during his 1956 visit Mace, 1957), and subsequent events, much of the Superintendent's report now appears to be wishful thinking. However, there is no denying that over two decades *adjustment*, for children and adults alike, became the official state goal, and psychology was the instrument (Report of the Royal Commission on Education, 1962: 367, 674). To reinforce the core of the argument for marking off this period, it seems helpful to list all of the innovations in those services and vocations in which psychological methodology was the central form of perceiving and treating children in general and atypical children in particular. Beginning with those services directed essentially towards the control of children, the following innovations were made between 1945 and 1968: a psychological services division of the Department of Education was effectively established in 1945 (Sutch, 1972: 207); the first Department of Education residential school for maladjusted children was established at Mt Wellington, Auckland, in 1960 (Mitchell, 1972: 39); guidance counsellors were first appointed to selected secondary schools in 1960 and from 1968 to all secondary schools (Department of Education, 1968); the visiting teacher scheme, first begun in a small way in 1943 to enhance school and home liaison for children with behaviour problems, was expanded until in 1971 thirty-four teachers were employed in this form of school social work (Sutch, 1972: 200-1); from small beginnings in 1942, speech therapy was extended until in 1970 a total of 106 primary school speech clinics were in operation (Seabrook, 1972: 124); "gifted children" were singled out for special attention from 1948 (Parkyn, 1948) and "The fifties, in keeping with worldwide trends, saw heightened interest in the gifted

at district and national level in New Zealand" (McAlpine and McGrath, 1972: 153); the Police established in 1957 the Juvenile Crime Prevention Section, later to be renamed Youth Aid, to give differential treatment to young offenders by dealing ". . . with them in a manner other than by prosecution in the children's court (Burrows, 1967: 32-3); an inter-departmental Joint Committee on Young Offenders was established in 1958 (Ferguson, 1967: 17-23) and a Research Unit established shortly afterwards (Slater, 1967: 45-74); an embryonic marriage guidance movement was taken in hand by the Department of Justice and nurtured to fulfill tasks in the adjustment of disintegrating families (Clements, 1970: 157-173). The educational provisions listed here are dealt with more fully later in this chapter.

Turning to the development of new vocations and the enhancement of those therapeutically inclined, the following innovations can be discerned: "high level training courses" for educational psychologists began in 1960 at the University of Auckland, followed by other universities over the next decade (M. Sutch, 1972: 207; Panckhurst, 1972: 222); New Zealand's first school of social work was established at Victoria University of Wellington in 1949 and remained the only school for twenty-five years (McCreary, 1971a; 1971b); a residential staff training centre for social workers was opened by the State Services Commission in 1963 at Porirua (Austin, 1973: 3-7); training for primary school teachers was extended from two years to three in 1967 (AJHR, E.1: 1968); post-graduate courses for clinical psychologists were established at the University of Canterbury in 1964; the Department of Justice made available in 1960 the Point Halswell Training School (part of Mt Crawford Prison) as a venue for the inaugural national residential training workshops of the lay counsellors of Marriage Guidance; courses for the professionals who acted as supervisors followed (Clements, 1970: 162-7). Thus, functional differentiation within the helping professions, posited in proposition two in the introduction to this chapter, progressed at a very rapid rate.

In work with offenders, including youth prisons, or *Borstal Institutions* as

they were then known, the psychotherapeutic ideal took hold also.

> In the years 1950 to 1960, the Department of Justice, in taking stock of its own concerns, had found itself caught up in the need to employ a new group of professional people, and to enlarge its team of social workers. Doctors, teachers, psychologists, chaplains and social workers were recruited for work in penal institutions. The Probation Service was reconstituted and given a new look. The Prisoner's Aid and Rehabilitation Society - a voluntary body - was injected with new life and had ready help and assistance from the Department of Justice (Clements, 1970: 158).

But youth crime was a concern of more than the Department of Justice: it was to become an everyday topic and a growth industry.

Delinquency Rediscovered

Early in the period under review, the notion of juvenile delinquency was first brought to academic prominence by Phillips (1946). To explain comprehensively the dynamics of *juvenile delinquency* in its many theories and forms has been attempted by many New Zealand writers and agencies since 1945 (Ausubel, 1960; Blizard, 1967; Department of Social Welfare,1973; Ferguson, 1967; Hampton, 1976; Inglis, 1953; MacKenzie, 1967; Manning, 1958; Marsh and Darwin, 1967; Mitchell, 1956; Nixon, 1974, 1979; Phillips, 1945; Stoller, 1963). While it might seem more satisfying to keep to the strict definition of a juvenile delinquent as a child or young person who has been found guilty of a criminal offence, that would miss the point because that was not the limitation used in the post-war period. At that time the term, or often just the word *delinquent*, came to mean a wide range of behaviours by young persons. Indeed, worldwide the term became so commonplace as to cover almost any form of behaviour which was not decorous, respectful, and traditional or was otherwise reserved for adults only! It was used by adults to express anger and bewilderment at adolescent tastes and glibly used to describe young people who offended them (Kvaraceus, 1964: 16).

A Youth Culture. There seems no doubt that in the popular mind, there

was little to distinguish between those young people who, in Ausubel's term (1960: 114), were exhibiting *symbolic defiance* as a reaction against authoritarianism, and those actually breaking the law; one condition was thought to lead sequentially to other. Throughout the Western world, youth cults identified by distinctive dress, deportment, language, music and veneration of iconoclastic heroes took many forms. The major movement in post-war New Zealand was *Bodgieism* (Manning, 1958; Crowther, 1956).

Bodgieism originated in Australia and was practised through a style of clothing modelled loosely on the American "zoot-suit" fashion, hairstyles, language and new styles of music and dancing. Males only were bodgies; female adherents were known as *widgies* (Manning, 1958). It was also described as

> . . . frequently an exaggerated and generalised expression of this same resentful attitude towards authoritarian discipline and authority figures, but is so intense that it comes closer to outright rebellion than symbolic defiance. Unlike the organized and predatory type of juvenile delinquency that flourishes in the American slums, it is basically a cult of exhibitionistic non-conformity, of out-of-bounds loutishness and of studiously laboured rejection of adult standards of respectability. It is, of course, an atypically aggressive reaction to authoritarianism (Ausubel, 1960: 114-5).

The question needs to be asked in what way did the post-war youth culture differ from earlier periods of youthful rebelliousness, fads and fashions? Was it so different from the social abrasiveness of *larrikinism* which affronted the citizens of Otago early in the century (Olssen, 1984: 96-164)? Clearly, the explanations are more complex and worthy of better treatment than I offer here, but three major differences are immediately apparent. First, although the most florid behaviours were predominantly "working class", these were not strictly confined to any one class. Thus, age rather than circumstance was the cohesive factor. Second, the notion of a separate community of ideas and association for young people was not only institutionalised but also commercialised, as one reinforced the other. There was a degree of

inevitability about this outcome for a society which was prolonging adolescence and giving youth control over its spending power. Third, the developments of the 1950s and 1960s marked a period of the *emancipation* of youth from adult control. What began as symbolic defiance became over time a self-perpetuating succession from the adult estate as the youth of the 1960s rallied around new moral causes.

That emancipation was not without its opponents and critics. Alarmist reactions to adolescent cult behaviour were commonplace in the 1950s and the street wars between bodgies and young men on leave from compulsory military training were reported in such a fashion that ". . . it appears that few police or citizens thought the military 'larrikinism' at all reprehensible" (Keith, 1984: 200). If youth was getting out of control and moral standards were slipping, the time had arrived for some state action. That opportunity arose when a particularly brazen series of offences was revealed in the so-called "sex scandals" of Lower Hutt City in 1954, and the government hastened to commission a committee of inquiry.

Moral delinquency: the Mazengarb inquiry. In July, 1954, paradoxically at a time when the rate of Children's Court appearances was at its lowest for twenty years, newspapers throughout New Zealand ran a series of articles arising from Magistrate's Court appearances at Lower Hutt of youths sentenced for sexual misconduct with girls under 16 years of age. Amongst other sensationalised claims made were that officials thought the rate of juvenile offending had doubled in recent years and that sexual promiscuity in young people was rife. This *cause célèbre* was picked up by the international press, including the information that this was the second time in two years that large-scale juvenile promiscuity had been prosecuted at Lower Hutt, and the government was forced to be seen to be taking some action.

Within two weeks, a Special Committee on Moral Delinquency in Children and Adolescents, without the power of a commission of inquiry to subpoena witnesses, was appointed with this Order of Reference:

> To inquire into and to report upon conditions and influences that tend to undermine standards of sexual morality of children and adolescents in New Zealand, and the extent to which such conditions and influences are operative, and to make recommendations to the Government for positive action by both public and private agencies, or otherwise (Report S.C., 1954:7)[3]

The Special Committee, chaired by Dr Oswald C. Mazengarb, Q. C., sat over a period of two months, holding hearings in Wellington, Christchurch and Auckland, taking evidence from 145 persons, some more than once, and receiving 203 written submissions from individuals and organizations. It did not interview any children or young persons directly. Its report was presented to government on 20 September, 1954, and edited copies were distributed to every household in the Dominion.

Had the Mazengarb inquiry been the only source available to support the claim that the period 1945 to 1968 was the golden age of psychotherapeutic invention, then the claim would fail miserably. The Report was a model of moral righteousness and conservatism which deplored the apparent changes in standards, and, while it stopped short of outright condemnation of psychological methods, it hinted in that direction and gave prominence to reactionary views. For instance, it aired witnesses' suspicions about the "New Education" —including the terms "play way" and "free expression"—and was unable to reach a conclusion whether such methods predisposed children towards sexual delinquency and licence. It thought that new concepts had resulted in unsettlement and produced such changes as ". . . the increased use of contraceptives, the broadening of the divorce laws, an increase in premarital sexual relations, and the spread of new psychological ideas" (Report S. C., 1954: 61). It felt safer to go further in its comments on "self expression" in children, as this extract shows.

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[3] This abbreviation is used hereafter to cite the *Report of the Special Committee on Moral Delinquency in Children and Adolescents, 1954.*

> Early in this century psychologists said that the repressive influences of early discipline were stultifying to the development of the child. They advocated that the child's personality would mature better if uninhibited. This has been interpreted by many people to mean that you could not use correctional measures in the upbringing of children and that their natural impulses must not be suppressed. Some of these people have even thought it wrong to say "No" to a child.
>
> People brought up this way have now become parents. It is difficult for them to adopt an attitude to their children which does not go to extremes either way. As a revolt against their own upbringing, they are either too firm in their control or too lax. Children brought up in both these ways featured in the case notes of delinquent children placed before the Committee (Report S.C., 1954: 45).

The Special Commitee devised twenty-seven conclusions and made eighteen recommendations, eight for legislative changes, nine for administrative changes and a final one,quoted here in full, addressed as "Parental Example".

> New laws, new regulations, and the prospect of stricter administration may help to allay the well-founded fears of many parents for the future of their children. It would, however, be a pity if parents were thereby led into any relaxation of their own efforts. Wise parenthood implies firm control and continual interest in the doings of sons and daughters. But what is most needed is that all people should, by right living and the regularity of their own conduct, afford the best example for the conduct of the rising generation (Report S.C. 1954: 64).

The unresolved issue was whether or not children and young people had always behaved in this way, or even more pointedly, whether they would have behaved in this "immoral" way in the past had opportunity, in the form of leisure, money and serendipity, facilitated such behaviour? A more plausible explanation of the social conditions which allowed greater opportunity to young people is in the quotation on p.259 below (Department of Social Welfare, 1973), in which it is suggested that affluence creates opportunity.

The Special Committee made the point that this was the first known occasion when a government had set up a committee to sift the available

information on sexual misbehaviour with a view to finding a cause and suggesting a remedy (Report S.C.,1954: 6). It is highly debatable whether it came close to either of those aims, but it did serve a useful political purpose in legitimating the concern of the government of the day. It seems unlikely that the Report had any great influence amongst the parents of Lower Hutt or New Zealand, although some of its recommendations were put into effect over the next few years. Amongst these new practices, school reports were routinely sought when social histories were being compiled for the Children's Court; new offences were created in the *Child Welfare Act* under the label "delinquent child" when children, especially girls, were accused of sexual misbehaviour; and a high-level Interdepartmental Committee on Young Offenders was established in 1958 (Ferguson, 1967: 21-3). According to one Child Welfare Division officer of the time, the Mazengarb inquiry was an elastic policy guide which could be, and frequently was, stretched to fit the ambitions of politicians and administrators alike in their attempts to placate constituents or to secure resources. A case in point was the political decision to open a district office of Child Welfare in Lower Hutt in 1954, when it ranked only fourth in the national priorities (Luckock, 1987). Further analysis of the Mazengarb inquiry is made in the conclusion to this chapter.

Juvenile Crime. The official documents on juvenile offending show that the period from 1945 began with a steadily declining rate of court appearances, and then an accelerating rise again until, at the end of the period, 1968, the rate and its acceleration curve can only be described as a crime wave (AJHR, 1972, E.4: 19). The accurate interpretation of figures recorded for serial rates of juvenile offending is a task so complex as to be nearly impossible. That uncertainty arises from variables difficult to operationally define, control or validate. Where court appearances are taken as the index, there is the question of undetected offences and the age of those offenders, the rate of reporting of offences, the decisions made by the *gatekeepers*, the police and child welfare authorities, to prosecute or not to prosecute, their resources to match demands, and the seriousness of offending compared from one year to the other. Opinions are divided on the degree of certainty with which juvenile

offending rates in post-war New Zealand can be interpreted. On the one hand, the annual reports of the Child Welfare Division (so renamed from 1948), tend to show an upswing in rates from 1950, and by 1965 the Division stated that the rate of Children's Court appearances for more serious offences reached the highest rate ever recorded at 61 per 10,000 of mean population aged seven to seventeen years inclusive (AJHR, 1965, E.4: 23). On the other hand, using the same data source, Marsh and Darwin (1967) demonstrated that age-adjusted rates actually showed a decrease over time. They claimed that

> . . . there has been a significant decline in the rate of delinquency during the post-war years. While this trend has diminished in the more recent years the figures still do not show an increase, and on the basis of the figures for the younger part of the present juvenile population we can expect this position to be maintained for the next few years at least. This is contrary to conclusion expressed in the most recent report of the of the Child Welfare Division (1965,pp.4-5) (Marsh and Darwin, 1967: 84).

Whatever the truth of the matter, the official view is that rates of serious juvenile offending reached a peak during the latter years of the war, with appearances at 54 : 10,000, and thereafter declined to a low point of 33 : 10,000 in 1948 to 1951. War-time levels were reached again in 1957-58. From that time, an acceleration in rates occurred until in 1968 the rate was 82 : 10,000. There was worse still to come, for in 1971 the Division reported a rate of 114 : 10,000 and commented that:

> In the last decade there has been an acceleration in the rate of increase which has been particularly marked in recent years. The last five years have seen a 63 percent (or 73 percent depending on which definition of seriousness is used) increase in the rate of serious offending, and there is no indication of any tendency for the rates to stabilise (AJHR, 1972, E.4: 19).

It was at this time that the Division decided to prepare a public statement of the state's inability to hold juvenile ". . . delinquency in check, let alone curing it by our present methods" (DSW, 1973: 41). Thus, in the extraordinarily frank and pessimistic publication *Juvenile crime in New Zealand*, 1973, the

enthusiasm shown nearly thirty years earlier for the psychological approach as state policy was discarded. The report said that officials lacked the necessary research data from which to formulate sound conclusions about the reason for the sharp increase or about the causes of juvenile delinquency in general. Based on research into what children actually did and the items they stole, it did, however, venture some speculation about the connection between behaviour and social conditions. This "theory" that affluence creates opportunity is meaningful here because it represents an informed view of the turbulent period of the 1960s.

> Crime seems to increase with an increase in affluence. However paradoxical this relationship may at first appear, it becomes somewhat more acceptable when closely examined.
>
> Factors associated with affluence are vast increases in the number and diversity of goods, lavish advertising of these goods in the mass media and open attractive display in the stores. Furthermore, much of the pressure to possess these goods is directed at young people because they have become a very profitable sector of the buying public. Over the last 20 years the numbers in the 10-16-year-old group have doubled from about 200,000 to 400,000.
>
> Thus we have more property to steal and damage and many more children to become involved in these offences, and children who may not offend on their own can be all too easily influenced by others who do offend. The end result is a snowball effect and this is a reasonable description of the trend of juvenile offending over the past 20 years.
>
> Other factors related to affluence have also conspired to increase the level of crime. With more money, many young people can buy cars and motor cycles. In this way they increase their mobility and their capacity to congregate in groups at the many "teen" meeting places which have sprung up to cater for them, and here again individuals in groups can be caught up in activities which they may not have contemplated had they been on their own or with one or two friends.
>
> Thus temptations are greater today than in the past and probably a good deal harder to resist (Department of Social Welfare, 1973: 17).

The observations made about juvenile crime and its causation were sufficient for the Department of Social Welfare to abandon any pretentions that the work of individual social workers would reduce or contain crime when

directed solely at individuals. Equally, it was thought that residential treatment was ineffective in preventing further offending by young people (DSW, 1973: 41). That is not to suggest that in any way the state was washing its hands of its control function. Indeed, there is a good case to be made that one of the purposes of Child Welfare and its attendant training centres, receiving homes, clinics and other institutions, is to create a symbolic representation of the power of the state. Effectiveness has little relevance when voters are calling for stricter law and order measures.

Day Care: The Last Bastion

The lives of children and young persons were by 1945 widely and closely monitored by state welfare, education and health agencies except in one major area—the temporary care of pre-school children by non-kin in places other than recognised educational institutions and registered children's homes, commonly known as *day care*. The return of women to the paid workforce and away from their own homes during World War Two, had created a demand for the temporary care of pre-school children (Ebbert, 1984: 185). The post-war full-employment era and the slow but steady liberation of women from the tyranny of the household role escalated that demand even further (Society for Research on Women, 1972: 27). By 1959, it was believed to be increasingly common for mothers to leave their young children in the care of others while they went shopping or to work, and nurseries both privately operated and not-for-profit had sprung up to supplement neighbourly help (AJHR, 1959, E.4: 14). Industry was slow to follow the pattern observable in other countries where employee crèches were commonplace and a commercially accepted solution to labour recruitment and morale (Clifford, 1972: 172).

Day care practices varied widely and were conducted under many different auspices. They covered such contingencies as brief care of children in shoppers' crèches through to whole day care in day nurseries for periods as long as the working week and sometimes overnight. Those run primarily as a

source of income were said to differ widely from others (AJHR, 1959, E.4: 14). Day care was clearly different from kindergarten and play centre attendance with their educational and developmental emphasis, although those may be used for the same custodial reasons (Barney, 1975:123-138). Nor did it come within the traditional Infant Life Protection legislation (see Chapter IV on *baby farming*), as that was limited to the private fostering of children for reward or payment for periods exceeding six days. As one of the war-time pioneers of day care complained, "The Health Department and the Plunket Society wouldn't have anything to do with us because we had older children who came after school, and the Education Department wouldn't have anything to do with us because we had babies" (Ebbert, 1984: 185).

The scandal. In common with earlier innovations in child welfare policy, when widespread publicity was given to one incident and questions were asked in Parliament, the state was forced by one event to intervene in this hitherto free market of day care. The outcry caused by the incident was labelled by one student researcher, in an otherwise uninformative analysis of day care, as "the crises of conditions" (Cuming, 1972: 18). The issue was aired in Parliament in July, 1958, by way of an urgent question asked by the government M.P. for the district, Mr W. Freer, of his colleague, the Minister in Charge of the Child Welfare Division, the Hon. Mabel B. Howard. The Minister replied that the matter had been drawn to her attention, that the matter was most shocking but that she did not intend to give the full story until police investigations were completed. She then went on to give this abridged resumé:

> Mrs Fulham, previously Mrs Hart, has for years been running foul of the Child Welfare Department [*sic*] by taking children into her home against the provisions of the Infants Act. She got around the position by running a day nursery, and this was causing a great deal of concern to the Child Welfare Department, as it was badly run and dirty.
>
> On the advice of Mr Astley, a Magistrate, the Child Welfare Department took out a warrant under the Infants Act on 15 July. Four trained welfare officers, an inspector of police, a constable, and a district nurse visited this home at 49 Wynard Street, Mt Eden, and removed 29 children who were in a very dirty and neglected condition. The woman whom they first saw denied that she was Mrs Fulham and said that Mrs Fulham had

> gone down the street, but later admitted that she was Mrs Fulham. The officers took the 29 children to the child welfare receiving home. Mrs Fulham did not know the surnames of most of the children, nor their home addresses. When the children were examined by a doctor one child was found to have a fracture of the leg which he had had for three days and nothing had been done about it. Most of the children had skin disease, one had scabies, and one baby was in very poor physical shape. These children were taken to the hospital. After much work by the Police Department all the children were returned to their homes, except one who was sent to hospital. It is possible Mrs Fulham will be prosecuted for neglect (NZPD, 1958, 410: 725).

What was not then revealed was that although the Child Welfare Division could prosecute the operators for neglect, it could do so only after the event, because neither the Division nor any other government agency had any regulatory power over the quality of care provided. The Superintendent reported the incident and the state response in his annual report.

> During the year a particularly distressing case came to light in which no fewer than 29 small children were found to be in the care of one woman who was subsequently convicted of neglecting one of them. The resulting outcry gave support to the case for legislative control, and led to the passing of the Child Welfare Amendment Act, 1958. When regulations are gazetted under this Act the Child Welfare Division will have the responsibility of registering and supervising all day nurseries, creches and private kindergartens (AJHR, 1959, E.4: 14).

Begging the complexity of the task, owing to the many factors to be considered, it was three years from the incident before the Division was able to effect the commencement of the regulations in March, 1961. Not the least of the problems, according to the draughtsman, was the difficulty of accommodating the rights of private operators to ply their trade (Luckock, 1987). In keeping with the emphasis upon psychological factors, the Superintendent did hint that those considerations would feature in the regulations to achieve better standards of care. He ventured that:

> The major difficulty seems to be the irresponsibility shown by a comparatively small number of parents who appear oblivious to the effects on the mental health and future development of their children, of attendance day after day at understaffed centres providing reasonable material care but little or no stimulating or constructive activity and

virtually no emotional warmth (AJHR, 1959, E.4: 14).

Thus, if parents couldn't be trusted to provide their infants with conditions which would promote mental health through emotional warmth, then the state would have to legislate these conditions on their behalf.

The final response. *The Child Care Centre Regulations, 1960*, effective on 1 March, 1961, had to set a course for the future as well as bringing up to standard those centres already operating, if they wished to be registered and to continue taking children. Any place regularly caring for three or more children was required to apply. Therefore, in addition to setting up in Part II procedures under which proprietors could apply to the Child Welfare Division for registration, be issued with licences or provisionally registered, and appeal against unfavourable decisions, a code of standards was introduced in Part III. These standards laid down minimum levels for the physical plant, fire and protective equipment, and sanitary and food handling arrangements. The problem for the authorities had been to devise a way in which operators could be induced to provide the "emotional warmth" dimension which the Superintendent had identified as critical. It was easy enough to legislate for the provision of "Play and other equipment for the use of children", (Reg. 21), but what guarantee could parents expect that even with the best of physical conditions and play equipment their children's emotional well-being would be assured? If the answer was to insist on high-quality staffing both in operators and their employees, what standard of training was to be expected and how could operators be induced to employ skilled staff in an area where no staff qualifications were required? The key lay in offering a "carrot" in the form of differentiated licences. This was introduced with Reg. 6, which offered Class A licences ". . . where the centre conforms with the requirements of these regulations *and in addition has at least one adult staff member holding a recognised training qualification*" (SNZ, Regulation 1960/167. Emphasis added). The same clause allowed for Class B licences where centres conformed but had no trained adult staff member. The section went on to detail the approved training qualifications which were a range of teaching, pre-school

or health—including Plunket Society—qualifications depending upon the age and health status of the clientele customarily provided for. As reported after the first year of operation, the hope was that ". . . it should make it possible eventually for parents to recognise—and encourage them to look for—those centres whose staff have made at least an elementary study of the needs of children" (AJHR, 1962, E.4: 15).

During the eight years between 1962 and 1970, the absolute number of day care centres lawfully operating exactly doubled from 162 to 324. At the same time, the number of Class A licences grew to reach about half of the total. After a relatively smooth introduction in the early period, the Division could say with some confidence that the quality of day care was improved by its intervention. However, by the end of this period, the number of centres began to decline. In the year 1970, forty new centres opened up , but fifty closed down. Many of these were casualties of zoning restrictions required by the *Town and Country Planning Act*, while others were caught in the intermediate area of wanting to care regularly for three or more children in a private dwelling. There emerged at this time the beginning of a groundswell of opinion that day care should be taken away from the commercial operators and given back to neighbourhoods and women in their own homes. The regulations were an impediment to this development and, as shown in the next chapter, popular opinion began to resent the overbearing bureaucratic efficiency of this device intended to protect infants from their substitute caregivers.

The significance of this intervention is that in the year 1961, the state finally covered the entire age range and circumstances for invigilating children away from their own homes. Statutorily empowered welfare workers had to have good cause to see children inside that home; outside of the home, government officials in many hats now had the power to inspect the welfare of children in day care, crèches, foster care, pre-schools, schools, boarding schools, hospitals, health camps, receiving homes, training centres and, of course, in the work place.

The *embourgeoisement* of adoption

After some seventy-four years of operation with relatively minor changes, the legislation governing child adoption was reviewed and a new Act brought down in 1955. Together with some amendments made over the next decade, it was to change dramatically the relationship between children, their parents and the state. Most importantly, it was to become one of those items of policy initially introduced as a remedy and which in time themselves become the problem. The effective changes were in the areas of confidentiality and the restriction of access to court records. In other countries, notably the USA, these were known as the *sealed record* practices, which meant exactly that. Although that term has been loosely applied to New Zealand practices, it is more correct to describe them as restricting access rather than prohibitively sealing records. These new practices raised the question of the equity of rights between the parties concerned and, at its most elementary, created a tension between exercising the right to non-disclosure and the right to know about oneself, parents and one's children. This policy not only affected children and their rights but also impinged on the rights of adults who had been adopted as children to obtain knowledge of their origins. Furthermore, I will argue in this section that this policy outcome represented a middle-class capture of child rearing theory within Western societies, such as New Zealand, a process of *embourgeoisement*.

How knowledge about origins is revealed to each party in the adoption process is a function of the amount of the knowledge that any one of them may possess and their willingness or freedom to share it. The process itself has been characterised in a contemporary American work as the *adoption triangle* (Sorosky *et al.*, 1978), in which adoptees, birth parents and adoptive parents form the three parties. For policy analysis purposes, such a characterisation ignores the influential role played by fourth parties, those whom I call the *brokers*. Included in this group, in the New Zealand context and similarly in most Western countries, are lawyers, child-welfare workers, adoption placement agencies and the courts. Taking into account that it is not possible

to effect a legal adoption in New Zealand without the involvement of most of these, and certainly not without a court hearing, the process might be better described as the *adoption quadrangle*.

Child adoption is a field rich in fundamental questions about the human condition. It is a complex field, covering as it does the behaviours, emotions and prejudices of all those varied actors, legislative rules, legal and administrative practices, psychological, child development and social service considerations. The best attempt to draw together these threads in an historical and interpretative narrative describing New Zealand's adoption policy and practice from 1881 is the compilation by Griffith (1981) (written in telegraphic style and amounting to over 200 pages of miniscule print without exhausting the topic). Regretfully, the discussion here has to omit all but the background to the issue of rights in adoption; researchers are referred to Griffith to make up that discrepancy. That book, together with material collected during my earlier study into adoption (McDonald , 1979b), formed the source for much of this section, except where otherwise acknowledged.

To recapitulate some of the points noted in Chapter V, the following extract is offered in which three major trends in the history of adoption are outlined:

> The first is its transition from a simple means of facilitating arrangements for the care of deprived children by subsitute parents to a largely State-controlled system for the transfer of children from one family to another; the second is the widening of the extent to which the process is available—by the raising of the maximum age of the child to be adopted, the extension of the eligibility of persons to become adopters and the widening of the court's powers to dispense with consent of parents; and assimilation of the child into its new family accompanied by official secrecy about the process (Webb, 1979: 6).

The focus of this section is upon the last of these trends, because this secrecy was the core of the new problem. The issue is organised here in three segments: practices in New Zealand for the period up 1955, the consequences of the *Adoption Act, 1955*, and a summary of the issue as it relates to human rights.

Child adoption to 1955. The introduction of legal adoption in New Zealand in 1881, as noted in Chapter V, regularised the former practice of whole-of-dependency fostering and made the child in most respects of legal standing similar to others. There seems no doubt from the reputation and earnestness of the Act's sponsor, George Waterhouse, that it was intended to encourage families to save children from the stigma of illegitimacy and deprivation and, in turn, protect adoptive parents from later claims for custody (NZPD, 1881, XXXIX: 5). For the first forty-five years of adoption practice, the law required that the proper name of the adoptive child could not be changed. The procedure followed was to add the new family name, usually by hyphenating the two names. In a situation where the child was patently adopted, there was little need and often less chance for the adoptive parents to dissemble on the child's origins if they were so inclined. Certainly by adulthood, the prospect for adoptees to be able to seek out origins were improved by such practices.

The *Adoption Act, 1955*, changed that practice by allowing adoptive parents to confer new first and family names on the child at the time of the granting of the final order. During the period of the interim order, usually six months, the child's birth name was its legal name. It was from the introduction of this Act onwards that the chances for dissembling about the child's origins became stronger. However, it must be emphasised that while adoptive children may have been kept ignorant of their status, during the period up to 1955 adoption records were open to any of the parties to an adoption. Thus, if in adulthood persons learnt of their adoption they were able to search the court records where other avenues were denied them.

Until 1915 when the *Births and Deaths Registration Act* was amended, any person could obtain a copy of an adoptee's original birth certificate, including the full particulars of the registered name, and those of the birth parents. The amendment provided that henceforth the information could be given to any person certifying that it was material to the purposes for which the copy was

required, in other words, it was intended to restrict knowledge only to the parties involved and to protect the adoptee from damaging disclosure. That provision was strengthened by a further amendment in 1924 which required the Registrar of Births and Deaths to be satisfied that the copy was provided for a material purpose. In 1950, yet another amendment gave discretionary power to the Registrar by adding the word *may* to the clause. And it was not until 1969 that the issuing of adoptees' birth certificates was brought into line with the intent of the new *Adoption Act,1955*, and the Registrar was expressly forbidden to issue where it would be in contravention of the principles set out in s.23 of that Act.

The policies in regard to court records, the second major source of documentary knowledge about origins, paralleled those outlined for birth certificates. In general, the aim of imposing successive restrictions was to protect the adoptee, especially where there was the likelihood of the stigma of illegitimacy. Provision for parties to adoptions to search court records was specifically protected under the Magistrates' Courts Rules, which as late as 1948 prescribed in s.28 (3) that "Nothing in this rule shall be construed to prevent any party to any proceedings from inspecting any entry in the Court books, or any document, relating to those proceedings".

The Aoption Act, 1955. Restrictions on access to court records took a different line with this Act, when these provisions were enacted:

> *23. Adoption records not open to inspection* - (1) Adoption records shall not be available for production or open to inspection except on the order of the Court or of the Supreme Court:
> Provided that the adoption order itself shall be open for inspection by an executor or administrator or trustee who requires to inspect it for some purpose in connection with the administration of an estate or trust:
> Provided also that the adoption records shall be open to inspection by any Registrar of Marriages or officiating Minister under the Marriage Act 1955 for the purpose of investigating forbidden degrees of relationship under that Act.
> (2) Any such order may be made -
> (a) For the purposes of a prosecution for making a false statement; or

(b) In the event of any question as to the validity or effect of an interim order or an adoption order; or
(c) On any other special ground.

These provisions also affected all persons, young and old, who had been previously adopted. For those people whose only source of information about their origins lay in court records, these were now effectively closed. On the whole, lawyers took the view that simply wanting to know about birth parents was not a sufficient reason to apply under the special ground clause of s.23 (2)(c) so, as described in the next chapter, it was well into the 1970s before applications for access were even filed for clients.

Since the late 1950s, parties to adoption and researchers alike have sought to discover how such a policy was made and the reasoning behind it. Despite the fact that several members of the original officials' committee that drafted the Act were still alive when these questions began to be seriously and urgently asked, little light could be shed on the matter. One member told Griffith that he had no recollection of it being a contentious point and that s.23 appeared and was retained without substantial debate (Griffith, 1979). Another member of the committee has even hinted in her later review of the law that it was a drafting mistake. "The criticism of the section is centred on the way it frustrates the desire, or need, of many adopted children to find out something about their origins: but I do not think that was the objective of those responsible for the 1955 Act" (Webb, 1979: 88-9).

The consequence of these restrictions was to muzzle the *brokers*, rather than the other parties concerned. Lawyers had got into the habit of acting as if s.23 applied before the final adoption order was granted. Some took steps to hide the names of the adoptive parents from the birth mother and vice versa by covering-up all but the signature line on affadavits to be sworn and filed. When approached in later years, most lawyers declined to make their files available for the purpose of searching origins on the grounds that these copies constituted "court records". Some were known to collude with clients, while distancing themselves from active disclosure, by leaving the room while the

forbidden file was left on the desk. But on the whole, lawyers were perceived by people involved in adoption searches as unhelpful and part of the conspiracy of secrecy (Shawyer, 1979: 6-24). A similar stand was taken by the Child Welfare Division, which had been drawn unofficially into the adoption business after the *Infants Act,1908*, and officially after 1955.

From 1955, Child Welfare played the largest part in adoption and soon became the largest brokerage agency. Again, this was probably not an outcome ever envisaged by the legislators, but once the Division took responsibility in 1925 for the welfare of illegitimate children, the duty of compiling and submitting social histories and making recommendations on adoption to the court, it acquired a very large clientele. After the 1955 Act, that position was further strengthened, even though adoption legislation has always been administered by the Department of Justice because it is a judicial decision. Birth mothers were referred to the Division for ante-natal assistance, and prospective adoptive parents registered in the hope of being approved and allocated a child. Even where there was a private agency involved, usually associated with a maternity hospital and refuge for unwed expectant mothers, or in adoptions arranged by medical practitioners, Child Welfare still had statutory duties of inspection and recommendations to make (Shawyer, 1979: 25-49). It was likewise constrained by treating its own records as if they were part of court records, and Division practice forbade the revelation of anything more than the most general physical description and health history to be disclosed—certainly nothing which could lead to the identification of any of the other parties. Prior to 1955, it did not keep an index to adoption records so that little could have been revealed in any case.

Fortunately, these restrictions did not apply to anyone else. As related in the next chapter, *self-searching* was not prohibited, and word-of-mouth or family recollections were alternative avenues for those denied access to official records.

The rationale. Adoption practices in the USA, England and New Zealand,

have over the years followed similar trends. Restricted or sealed records came earlier in the first two countries mentioned, whose experiences have been used to find answers to developments in New Zealand. Such comparisons can be misleading, however, and one the one hand Griffith asserts that the given reason of protecting the birth parent has only recently appeared, not having been expressed or considered in any New Zealand statute or Parliamentary debate prior to 1978, so that ". . . attempts to read back into legislation reasons that were never the considered intentions of the legislators should be avoided" (Griffith, 1981: 46). Luckock, on the other hand, says that the adoptive parents he was dealing with wanted the break to be complete, and that disguising illegitimacy or the threat of blackmail was never a consideration with parents (Luckock, 1987). Cognizant of those opinions, it may be fair to presume that some latent reasons were articulated only when the practices themselves came into dispute.

Universally, restrictions on disclosure almost certainly came about to protect the adoptee from the real or imputed stigma of illegitimacy. The reciprocal of this practice was to protect the birth parents, especially the mother, from similar prejudice or, as expressed in some cases, from blackmail about a discreditable act. Other reasons advanced included the right of the adoptive parents to enjoy uninterrupted possession of the child in whom they may have a substantial emotional and financial investment. Overarching all these considerations, the rationale for changed practices have been attributed to the *complete break theory* (Griffith, 1981: 46). Unsatisfactory outcomes in fostering and institutional alternatives suggested that mothers alone could not hope to maintain a satisfactory relationship under such conditions. Given that the very nature of adoption promotes a new identity for the child and its assimilation into a new family, it is easy to see how it came to be believed that environment would overcome heredity only when knowledge about origins was suppressed. This theory and its practices had

> . . . three main components, a *protective* role to safeguard the child during the child raising years—along with the adoptive parents, a *constructive* role emphasising the formation of new relationship and a

> break with the past. Lastly, a *destructive* role, to destroy the connection with the past (Griffith, 1981: 49. Emphasis added).

In retrospect, even if the *Adoption Act, 1955*, was not consciously predicated upon such notions, the attitudes formed by the complete break theory came to be applied by magistrates and others who were the gatekeepers to adoption. Legislative amendments during this period further cemented the complete break policy. The *Births and Deaths Amendment Act, 1961*, provided that all copies of birth certificates should show the names of the adoptive parents as if they were the birth parents making it even more difficult to detect the original fiction.

Another factor in the incremental moves during this century in New Zealand for more exclusiveness in adoption, that is, tying the adoptive parents and adoptees closer by excluding the birth parents and others, was the changing socio-economic features of the practice. Triseliotis observed that ". . . it is only in the last twenty or thirty years that adoption stopped being regarded as occurring only among the lower classes" (1973: 87). In the English-speaking world, it was

> for long only a variant on the traditional Poor Law system of lodging indigent children in exchange for their labour. When it became more than that, and the passage of laws ensured that children were well-treated, the whole process still faced a great deal of opposition. Most of this was of a class nature: adopted children were likely to be of a social origin quite different from that of the adopters, who, as a result, tended to expect the kind of behaviour they attributed to the lower class. . . . Although adoption early became law in the United States it was only practised by the white ruling group - and the agencies were only created by, and intended to serve, this group. Other castes may have practised *de facto* adoption on a much wider scale, as a means of family survival in times of poverty and dislocation, but they did it without benefit of law. . . . The English problem was that once adoption became law, confusion might arise in the class system. The punishing of poverty might have to stop; the poor might begin to use the allieviating mechanisms intended for their betters (Benet, 1976: 70).

Post-war New Zealand saw a tremendous demand on social service agencies for infants for adoption. The growth of this demand and some

ostensible reasons for it were summarised by the Superintendent of Child Welfare.

> The popularity of legal adoption is a comparatively recent phenomenon, mainly a development of the last 20 years. It was in 1939 that my predecessor first reported that the Branch was "unable at times to find suitable children for applicants". In the same year he reported that the number of adoption orders had exceeded 500 for the first time. Only six years later the number of orders made in a year passed the 1,000 mark.
>
> The excess of "demand" over "supply", an intermittent difficulty in 1939, has for a long time now been the normal situation except for children of mixed racial background. Even though 1,179 adoption orders were made during 1958 (82 more than the previous year's record figure), and even though at the end of the year 1,341 children were placed for adoption, there were still 1,759 unsatisfied but apparently suitable applicants on our waiting lists together with an unknown number on the waiting lists of private agencies which specialise in the care of unmarried mothers. There is no sign of any decrease in the demand.
>
> There can be little doubt that increased financial prosperity and improved standards of living have been important influences on the growing popularity of adoption. However, it seems that more subtle factors have also played a part. Childless couples seem to be more ready than they used to be to seek medical and other advice and to be more ready to accept somebody else's child into their home if they are unable to have children of their own. Adoption is a matter which has received a good deal of publicity over recent years and married couples seem to speak more openly about adopting a child. The result seems to be that adoption is both more common and better known and, therefore, more acceptable than it was (AJHR, 1959, E.4: 6-7).

Not only did the adoption of newborn infants become respectable in New Zealand, but the resistance to children of "mixed racial background" also declined. Indeed, during this period several waves of imported "orphan" children were relocated with families from sources in Asia under schemes run by the National Council of Churches, from Korea in the 1960s, and from Viet Nam in the1970s (Luckock, 1987).

This capture of the adoption market by the middle class was accompanied by family practices characteristic of modern industrialised capitalist society.

These dictated that the nuclear family be held together as much by sentiment and emotion as by the economic contingencies of the past. Fertility was a commodity which could be purchased but only when an adequate emotional bonding and dependence was assured. As privacy and confidentiality has a prime, and sometimes economic, value in capitalist society, these transactions were offered in secrecy at all times in a ritual orchestrated by the state. It was believed that the best way to achieve this for all the parties involved was to destroy the past and act in all respects as if the child was the natural-born child of the adopters. Psychological justifications based on the *best interests of the child* (Goldstein *et al.,* 1979) supported the complete break theory, which was the modus operandi of child-placement agencies, Child Welfare included.

Rights in adoption. The three aims identified by Griffith in the complete break practices proved to be in contradiction one with the other. In particular, the destructive elements of denying the child knowledge about its origins proved to be incompatible with the constructive and protective elements. The heart of the issue is whether the state, by inventing a legal fiction to facilitate permanency of placement, can expect it to ". . . solve the various problems inherent in the situation out of which it has arisen—it can do no more than provide the basis for their solution. No amount of legal juggling with the facts of biological relationship can create, though it may serve to foster, the sound psychological relationship between adoptive parents and child that is the child's basic need" (Webb, 1979: 6).

The potentiality for stress upon adoptees was increased during this period by the growing practice of agencies to promote to adoptive parents the ideal of confiding knowledge about status at an early age but not complete information about the characteristics of birth parents. While for some adopted individuals adjustment to fulfilling lives was possible without knowledge of their origins, the practices of the 1950's and 1960s denied them the right to know should they have felt the need. A groundswell of resentment against these restrictive practices in New Zealand did not coalesce into collective action and political patronage until well into the 1970s.

DEVELOPMENTS IN NON-STATE CHILD WELFARE

In charitable work, as elsewhere, the introduction of Social Security began to make itself felt after the War. The most obvious effect was the lessened demand for material relief and a consequently changing public attitude towards giving for charitable works. If the welfare state was anticipating and providing for all needs, what then was left to be done? The theme taken-up by the non-state social services was in tune with the times: the new emphasis was to follow the ideas of adjustment, family support, and the psychotherapeutic ideal. This was true of church and secular agencies alike, and changes in their policies and practices are reviewed in this section.

Church-sponsored Work

Almost all the major Christian denominations began to restructure their social service divisions during this period. A move away from residential care as a standard mode of care for children is apparent. Simultaneously, those agencies began to turn their attention to a different style of service designed on the counselling model. The psychotherapeutic model was embraced even more fervently in the non-state sector than in the more limiting climate of state accountability, leading not only to pastoral counselling specialisms but also to experiments with therapeutic modes (Keyes, 1970: 37-43; McGregor, 1972: 103; Robb, 1959). The history of developments in one large regional church agency, a Presbyterian Social Service Association, was described in this fashion:

> The need for a more sophisticated counselling service was becoming apparent in the early 1960's. The state had become actively involved in many areas of counselling with social workers employed by the Social Security Department, psychologists and visiting teachers by the Education Department, and welfare officers by the Justice Department. Traditionally, people seeking help from the PSSA had been counselled by the Superintendent, but with the retirement of the assistant superintendent . . . the time given to counselling was reduced . . . [and] a committee member was appointed as Director of Social Service

Counselling.

> Increasingly as the work developed, it became more apparent that underlying the majority of problems—the lack of finance, lack of adequate housing, delinquency, illegitimacy, etc.—were more significant factors. Feelings of general inadequacy and loneliness leading to an inner lack of harmony and conflicts in personal relationships were the more basic problems, and by helping to solve these it was hoped that many of the situations that were met by the social services would be prevented (Wilson, 1981: 33).

When the inaugural counselling director resigned, the new appointee was a counselling specialist who, without oversight of the social work staff, counselled those ". . . whose inability to cope with strain and tension has seriously impaired personality, health, and relationships with people" (Wilson, 1981: 33).

Similar developments were recorded for other church-sponsored agencies. Anglican Social Services in Canterbury underwent a major reorganization with an emphasis upon the employment of professional social workers. As well as actively seeking staff with social work qualifications, the Anglican Social Services Council provided study awards for the training of staff. It collaborated closely with the new School of Social Science at Victoria University by regularly taking students for practicum placements and by commissioning Professor David Marsh, inaugural head of the school, to advise on organisational changes in 1949 (Morgan, 1966: 97-101). In Dunedin, the Presbyterian Social Service Association social work

> . . . took a major step forward in 1962 when Miss Frances McNamara returned from Wellington after gaining a diploma in social science . . . to investigate child care, and to assist with the general social work of the Association. Miss McNamara, who was neither minister nor deaconess, represented a new trained professional in the social service field, the Social Worker (Rae, 1981: 90).

Registered Children's Homes

Between 1945 and 1968, work with children in non-statutory agenices underwent extensive changes. This was particularly evident in the work of

"orphanage" institutions conducted by the churches and other voluntary agencies, and known officially as registered children's homes—from the requirement to "register" under the *Child Welfare Amendment Act, 1927*. To indicate the extent of these changed practices, by 31 December, 1944, eighty-two homes were registered under the Act with a combined total of 2,790 children in residence. At the end of 1967, the number of homes had shrunk to sixty-seven and the total roll to 1,253. The explanation lies in the modified policies of these private agencies. Whereas homes had diminished in number by only fifteen places, the total number of children more than halved over this period. Many of the older, larger homes closed and some were not replaced; others were replaced by different types of institution, particularly the *cottage home*. Thus, the average institution became smaller and with an altered staffing. The cottage or family home model called for the employment of married couples, the husband following his normal calling and the wife running the household.

The motives for change in this area came from multiple factors. First, there was a degree of expediency in not continuing the large *warehouse* type of children's home. Costs were high, especially as the labour of the residents was less available to provide some of that self-sufficiency expected of the Stoke type of institution, described in Chapter V. Plant maintenance, the difficulty of getting the right staff to live in remote areas, or even to "live-in" at all, and the uncertainty of keeping a full roll and thereby ensuring a steady rate of state capitation payments, all made the large institutions less attractive. "The costs of running children's institutions today have increased so much that in some cases it would be cheaper to maintain an adult in a first-class hotel than a child in one of the homes" (Mathew, 1949: 35). Second, the advent of Social Security had made it less necessary for indigent children to be brought into care. Third, there was pressure from the state authorities to follow the *Beck doctrine*. Beck's belief that foster care was better than residential care was enshrined in the *Child Welfare Act*, and required that children in state care not be maintained in institutions "save in exceptional circumstances". Fourthly, there was a growing body of professional and lay opinion which condemned

the large institutions on humanitarian and psychological grounds.

The diversification made by the Anglican Social Service Council, Canterbury, and the justifications for it, is typical of church agency changes in the 1950s:

> The new direction being taken by social work, especially in the care of children, greatly interested the Council. There was much pressure from enlightened quarters concerning the necessity for caring for children in smaller groups to make it possible that all would receive the love and attention they could expect from their own mothers. This was difficult to arrange in a large institution (Morgan, 1966: 35).

The report of Professor Marsh, noted on the previous page, recommended breaking up the Council's large homes and replacing them with smaller homes. In the event, that was adopted as policy and the existing homes were replaced by a number of cottage homes spread throughout Christchurch. A full account of these developments, including the innovation of hiring trained social workers as cottage home parents, appears in Morgan (1966: 61-4).

Part of the "lay pressure" alluded to above came from an article published in *The New Zealand Listener* on 20 August, 1949, letters published in response, and the author's reply, all of which she put together in a privately published pamphlet later that year. In her article *Orphanages without orphans*, Doris Meares Mirams, writing first under her initials only, put forward the thesis that large institutions were against the interests of their residents. The substance of that thesis was summarised by her patron, Professor Henry Field of Canterbury University College, who provided these comments in the foreword to the Mirams' pamphlet:

> In the first place she claims that behaviour difficulties are dealt with inadequately, and in particular submits disturbing testimony concerning the treatment of enuretics in some institutions. If the position is (or was) as stated it would appear that the senior staff and committees of management concerned are open to serious criticism. Furthermore, the question may properly be raised as to whether the Child Welfare Division of the Education Department has adequate powers of

inspection and whether such powers as it has are being fully used.

The second line of argument is that the children should be kept together if possible, that the sexes should not be rigorously separated and that the group for day to day living should be small. In short, 'cottage' and 'family' homes of moderate size should replace the larger institutions. As will be gathered from the correspondence such a policy is adopted and acted on to some extent in New Zealand.

The third contention is that even greater efforts should be made to keep children with parents or relations or in foster homes instead of admitting them to institutions.

The fourth main point is a plea for professional training along social work lines for (at least some of) those who are to staff the necessary institutions. The recent establishment of a department of social studies at Victoria University College should provide a means for meeting this need (Field, 1949: 4).[4]

It must not be assumed in all this that the state was a disinterested party to the charitable works of the churches and private agencies. It had shown its power early in the century to forestall additional industrial schools because of the denominational rows. During this present period, it had added to its confusion of functions as inspector, regulator and benefactor, through registration and capitation payments, by also introducing cash subsidies for capital works of the building and remodelling of children's homes. This was a major reversal of long-standing policy (Luckock, 1987). It raised the question of the purpose and the symbolism of those payments. One the one hand, the state was seen to be actively supporting residential schemes and on the other, its power to influence an antiquated and patently inhumane system of caring for children appeared to be circumscribed. The answer lies in this tension between the state's desire to intervene and the private sector's determination to resist.

Gradually, agencies moved towards foster care as the preferred mode of

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4 The treatment of enuretics deplored by Mirams was in at least two homes ". . . where tables are set apart in the dining room for the luckless enuretics, and they have to endure punishment and humiliation for acts over which they have no control whatever. Needless to say the number of chronic bed-wetters in such Homes is high" (Mirams, 1949: 11).

care. Some, principally the Dingwall "Home" in Dunedin, used the state's capitation system to remain as registered children's homes, but without an institution; children were all placed in foster care under a notional statutory manager of a notional home. Conditions for children in registered children's homes did improve. This phase was, however, a harbinger for further reductions in the extent of this method of care, as the next chapter relates.

The Secular Voluntary Sector

In this period, a major development in the non-statutory social service area was a movement for co-ordination and co-operation between agencies. In retrospect, the Royal Commission on Social Security saw this development as congruent with the social pattern.

> A need for greater co-ordination in the social welfare field itself is . . . widely recognised. Since the end of the Second World War, social change throughout the world has accelerated and been accompanied by marked social unrest. Change and unrest have stimulated demands for more diversified and sophisticated social services. Social workers have formed a profession whose members have supplemented and often taken the place of the voluntary worker of earlier years. New techniques and, indeed, new disciplines have developed. . . . New services inevitably throw up questions of control and co-ordination (R.C.S.S., 1972: 309).

Co-ordination for children's welfare figured either directly or through broader missions for family service. In the major centres, social service councils and co-ordinating bodies sprang up, some of them residues from the enforced collectivities and charitable aid boards' relief committees, begun during the Depression of the 1930s. Those origins were apparent in co-ordinating councils formed around the *Mayor's Relief Fund* (Wellington), or the *Mayor's Coal and Blanket Fund* (Christchurch) committees. As well as comprehensive co-ordinating bodies, sectional-interest ones appeared, such as the Family Life Education Council of Christchurch, and the Co-ordinating Council for the Handicapped, Christchurch (Oram, 1969: 227-8).

On the national scene, it was not until the 1960s that social service agencies formed an effective co-ordinating body. Not surprisingly, it was funding which brought them to the conference table. By the early 1960s, the competition between agencies for charitable donations was exacerbated by their haphazard method of scheduling national appeals, and a conference was succssfully called to schedule those appeals. At the same time, the issue of a co-operative appeal system was mooted without success, but it was from those beginnings that a national body for voluntary agencies was created (Oram, 1969: 229-32). Prompted by moves from the New Zealand Association of Social Workers, discussion between agencies in the voluntary sector began in 1964, and a working party was empowered with a view to forming a New Zealand Council of Social Service. The isolationist policies of state social services caused that to be abandoned in favour of a Federation of Voluntary Welfare Organizations, which elected its first executive committee in 1969 (NZASW, 1971: 61). Its parallel organ for the churches—although there is overlapping membership—was formed as the Christian Council of Social Service, which in turn set up a Sub-committee on Child Care, to act co-operatively on common issues, residential care in particular.

Following the pattern observed in the last period, the enduring voluntary agencies concerned with the welfare of children which emerged after 1945 tended to be health oriented, with the Intellectually Handicapped Children's Parents Association being the best example. Plunket continued to expand, helped in no small measure by the post-war birth rate explosion (Parry, 1982). The Crippled Children Society opened new divisions and entered into a moderate growth phase (Carey, 1960). Concern for the continued vocational and independence training of slow learners led to the setting up of sheltered workshops and similar agencies (Oram, 1969: 145-50). The New Zealand Trust Board for Home Schools for Curative Education, based on the theosophical method of Rudolf Steiner, opened homes in Hawkes Bay in 1957, and Christchurch in 1966 (Milne, 1972: 134).

The thrust towards family support was given concrete expression in the setting up of marriage guidance councils, firstly in 1948 with the support of the National Council of Churches and then in 1959 with direction and funding by the Department of Justice. Wherever a Marriage Guidance Council was active, domestic proceedings work from the courts was contracted out to its amateur counsellors (Clements, 1970: 157-73). Just as the state's hand could be observed in fostering an ideology of residential care, it was even more overtly present in marriage guidance. Amongst other influences, it acted on children in two forms, one directly and the other indirectly. Part of the work of the new regional marriage guidance councils was to give family life education sessions in schools, and thus the influence of tutors selected and trained under the sponsorship of the Department of Justice bore directly on children and young persons. Indirectly, children were affected by the policy of the reconciliation ideology practised by marriage guidance in conformity with the legislation on the resolution of marital disputes. Past proscriptions on marital dissolution, first by the established church and later by the state, were shown to have encouraged couples to manipulate the law. As this gave way in New Zealand to a more pragmatic recognition of cohabitation dynamics, the state then assumed a duty to promote healthy and stable marriages by requiring that couples present their disputes for conciliation or reconciliation (Lloyd, 1978: 151-3). Later events were to show us how children were the losers in the protracted adverserial techniques employed in separation and divorce proceedings until 1981.

EDUCATION

This section considers two main developments in education in the years 1945 to 1968. Firstly, the connection between mental health and education became no longer a matter for conjecture or proselytising by a committed few. Underpinning this nexus was the coming-of-age of educational psychology and new attitudes to its application, as this New Zealand account of the period makes clear:

> During the last few years a significant change has occurred in the prevailing conception of educational psychology. Instead of being merely an applied branch of general psychology, it now ranks as one of several sub-disciplines with its own distinctive area of concern, namely human beings learning and teaching within the formal settings of schools or classrooms.
>
> This new conception is not merely an academic quibble, but contains the promise of important contributions to both education and psychology. *In the first place* an emphasis upon the body of theory associated with the setting within which teachers teach and students learn is likely to give teachers a new respect for theory. This is sorely needed, for developments in any field are dependent upon a body of sound pertinent theory, and the significance of general psychological theory has not always been clear to teachers. Many of them regard it as 'eyewash', to be mastered for purposes of passing examinations, but to be replaced by 'hunches', 'intuition' or 'common-sense' in the practical situation. Theory of educational psychology is likely to be of greater relevance and to possess more obvious and immediate applicability (Campbell, 1966: 178-9. Emphasis in original).

The themes of child study, understanding of the psychological and emotional needs of children and the training of specialists to undertake promotional, remedial and therapeutic work became firmly embedded in the education service and its training institutions. How this movement was viewed by the Commission on Education, 1962, provides some understanding of the tension between competing factions to influence the content and structure of the education system. To chart this change in policy and practice, the burgeoning growth of psychological practices and counselling and guidance in its several forms within the education service is reviewed, leading to some comments on its significance. The period opened with the formation in a small way of a national psychological service and ended with the establishment of guidance 'networks' in secondary schools, all grounded in the training of specialist teachers to undertake these psychological approaches. At the same time, pre-school developments recognising the social and emotional dimensions of childhood, and with an emphasis on creative play activities, grew rapidly and were finally drawn under the state umbrella.

Secondly, we come to the concluding section of the industrial schools movement, which although effectively disbanded in 1918, and legislatively dissolved in 1925 (Beck, 1950), lived on in the one anachronistic form of the trust deed of Wanganui Industrial (later Collegiate) School. It is also an illustration of the perpetuation of class and privilege divisions which form the two worlds of childhood in New Zealand.

Keeping to the direction formulated in the introduction to this inquiry, it is not my intention to try to fit the mainstream of educational developments into the framework of social policy for children, and a few paragraphs only must suffice to indicate the ferment of the education enterprise in this period. Issues and problems never before encountered by educational administrators were thrown up both by the extraordinary birth rates of the post-war period and by the decision to construct sprawling state housing tracts to alleviate the housing shortage. In 1945, about 35,000 families were on the waiting lists of the rental section of the State Advances Corporation (Trlin, 1977: 117). School rolls expanded more quickly than classrooms could be built (R.C.E., 1962).[5] So-called "pressure cooker" courses of one-year duration for mature students were introduced at teachers colleges to meet the demand.

Public reaction to the questionable quality of this type of expediency over rolls and teacher shortages was one of the prime elements motivating in the late 1950s the warrant for the Commission on Education. The Commission also

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5 At Naenae School, where the author was a first-day pupil, classes above Standard Three were taken by bus to other established schools until classrooms could be provided. The first classroom was a converted mess hut of the former camp housing the workers who had built the new town. Other classrooms were of the "pre-fab" construction, lightly clad and of minimal strength, so ubiquitous around the country as to rate attention by the Commission on Education (1962: 638-9). Some were still in use for other purposes over thirty years later (OHMF).

The abbreviation R.C.E. is used in this chapter to cite the *Report of the Commission on Education* (Chairman, Sir George Currie), 1962. Within the text it is also referred to as the *Currie Report*.

identified a wide range of other concerns.

> Throughout the country there were critics of modern methods of education who feared that too little emphasis was being placed on the drills and disciplines they felt to be necessary for proper progress in a pupil's studies. They feared the decline of the austere emphasis on the production of a sound character and a trained intelligence, which they believed to be the hallmark of the best educational methods of the past. Age promotion, replacing progress by achievement alone, had resulted, in their opinion, in debasing the coin of education by carrying pupils forward beyond their capacity; and they related this to the raised school leaving age, which brought into secondary schools many who could scarcely benefit from the kind of studies hitherto approved in secondary education. Rebellious members of this age group contributed to the formation of a type of pupil, dubbed "reluctant learners", whom secondary schools had scarcely met before. The Commission desires to place on record here that, although it did indeed receive submissions which put these views strongly before it, the volume of evidence and opinion of this nature was not commensurate with the public discussion which had preceded it (R.C.E., 1962: 4-5).

Included in the list of further concerns were cost, preparation for technical and tertiary education, educational organisation (a follow-up of the Atmore Report, 1930), religious education and state aid to private schools, teacher training and conditions, Maori education and opportunity, and research. In short, the Commission was expected to recommend an overhaul for the school system from top to bottom, which it did in a document of 886 pages.

Just as the Mazengarb inquiry of 1954 polarised opinion on the optimal way to control youth and ensure moral leadership, so was the Commission on Education the target for those seeking to influence educational policy. Views were put forward about the best way to achieve these goals, and the Currie Report categorises this diversity into the following five well-defined groups bidding for the soul of the education system:

> (1) Religious bodies, submitting that our system of secular education is too narrow in conception and that it has been an obstacle to the moral instruction of children, and urging the inclusion of religion and religious knowledge as a subject of instruction.
>
> (2) Social reformers, who stress the relationship between schooling and

> citizenship and argue for a greater emphasis in the work of the schools upon training for social and civic responsibility.
>
> (3) Advocates of a new education for a new world, including those who point to advances in science and technology and warn us that our economy is becoming such that mathematics and the sciences will have to be given a bigger place in the school curriculum.
>
> (4) Advocates of mental health who find that the emotional development of children is neglected or distorted by the emphasis of the present curriculum.
>
> (5) Advocates of increased guidance and counselling services in schools, together with those who urge a widening of the curriculum in order to prepare the pupil better for the use of his leisure. The arguments of this group are largely directed towards combating juvenile delinquency (R.C.E., 1962: 18-9)

The Report took nearly thirty pages of preamble alone—the substantive issues are in later chapters—to weigh the arguments. Its views boiled down to a belief that education should be valued and that this must be done in a non-threatening and supportive atmosphere. It rejected out of hand the authoritarian position while at the same time it accorded attainment a prominent place, recognising the wide differences between individuals. Of central interest to this inquiry is the Currie Report's defence of modern methods and the controversial areas of *play-way* and *self-expression* (1962: 27-37). It dismissed many criticisms of activity programmes for children as ill-founded, and sought to give a rational view of the importance of involving children in activity meaningful to them.

The Currie Commission paid special attention to the topic of juvenile delinquency and the schools, to which one whole chapter (15, pp. 654-674), is devoted. There is only one interpretation that can be put on the sixteen recommendations arising from the content of this chapter: they are unconditionally supportive of the psychotherapeutic ideal. The salient recommendations can be summarised as follows (item numbers in parenthesis): Higher staffing ratios in state housing and other delinquency-prone areas together with incentives to attract teachers to such areas (1 and 2);

more intensive training for teachers ". . . to recognise signs of insecurity in young children so that they may be referred in good time to the supporting services" (4); more staff for the supporting services, especially the Psychological Services (5); special training courses in social casework for visiting teachers (6); extension of the guidance couselling scheme and special training for counsellors (8); closer co-ordination of state welfare activities (11); that the preventive functions of the Child Welfare Division be made more widely known in the education service (12); that pupils granted early leaving exemptions remain under "preventive supervision of the Child Welfare Division" (14); that schools should work more closely with parents on understanding children's problems (15); that a full inquiry be held into youth services (16) (R.C.E., 1962: 674).

Many of these recommendations were put into operation in one form or the other over the next decade. Visiting teachers were included in the occupational groups eligible to attend the State Services Commission's Social Work Training at "Tiromoana", Porirua (Manchester, 1973: 7-13). The Psychological Service of the Department of Education did get a fillip, although visiting teaching and vocational guidance services were slower to expand (Sutch, 1972: 207). The National Development Conference of 1968-69 led to the setting up in 1970 of the Advisory Council on Educational Planning and subsequently to the Educational Development Conference, which actively involved parents in study groups throughout the country (Renwick and Ingham, 1974). But by far the biggest development was the growth of guidance counselling in secondary schools; this is examined in more detail.

Counselling and Guidance

Begun in a small way in 1960, the real growth phase of guidance counselling began about 1968. Government having already decided to expand these teaching roles, it set up in 1969 a Working Party on Guidance in Secondary Schools to consider the training and functions of the careers and guidance networks. Its report relates this growth.

In December 1968 Government approved the establishment of an additional ten positions a year for secondary school guidance counsellors for the next five years commencing in 1969. This decision marked the acceptance of a guidance and counselling service as a developing part of the New Zealand pattern of secondary education. It followed the careful study over a period of several years of the potential value of such a service and of the ways in which it could be best provided.

The recognition of the guidance counsellor as a specialist teacher with a permanent place in the work of secondary schools, and with the planned increase in the number of counsellors, makes it possible and appropriate to outline the accepted policies on their functions, selection and training based on the experience gained since the first counsellors were appointed in 1960 (Department of Education, 1969: 1).

The Working Party Report aimed to bring a degree of standardisation to what had become varied practices in schools. One of the principal areas of divergence which it sought to regularise was the emphasis between the counselling function and the guidance function. This it resolved by functionally locating guidance counsellors firmly within the teaching tradition and renaming them *guidance teachers*. Hitherto, it had been the practice to employ trained social workers, or counsellors without teaching qualifications, and this practice was stopped by requiring all guidance teachers to have a teaching qualification. Union rules ensured that a salary bar for the non-certificated teacher made such appointments unattractive and, therefore, the role was defined as teacher first and counsellor second. A further degree of standardisation was ensured by the introduction of the notion of the *guidance network*. The key to an effective guidance system, in the view of the Working Party, was co-ordination of activities of the teachers involved. " Our idea of a guidance network involves a team approach to guidance. For the team to work effectively it needs leadership and co-ordination of its various members" (Department of Education, 1971: 40).

Of most significance to this present study, was the desire of the Working Party to give guidance in schools an institutionalised framework of normalcy. In explanation of this, the view was that all pupils have educational, vocational and adjustment needs which can be met by teachers with special skills working

together. The guidance teacher was to have special responsibility for liaison with parents and external helping agencies. From this time onwards, the state educational system endorsed what must be called a positive mental health ideology and accepted responsibility for an integrated approach to the socialization of children in schools. This was to be achieved by yet another example of functional differentiation of role, and the creation of another psychotherapeutically-inclined vocation with that inescapable dualism of helping and social control.

Pre-school developments

The incorporation of research findings on the potentialities of organised pre-school experience is apparent during the 1950s and 1960s. One major influence on that interest in psycho-educational issues in the infant years was attributed to the American B. S. Bloom, who found that

> . . . the period of most rapid development in height, interest, attitudes and personality, as well as intelligence, occur in the first five years of life. For example, he estimates that as much as half of the variance in dependency and aggression behaviour at adolescence is predictable at the age of 5. His thesis heavily underlines the pre-school period as a highly important one for both emotional and intellectual growth (Barney, 1976: 2-3).

Pursuing his own analysis of the heightened interest in early childhood education, Barney also made the point that there were plausible socio-political reasons for state interest. If the adequate socialisation of specific groups of children was difficult, perhaps even failing, by the time they were inducted into the primary school system at age five (or six if parents so chose), then, given the promise of the new educational psychology, targeted pre-school programmes might provide the remedy. This led to the assertion that, "Most educational thinkers seem agreed that the pre-school years are the time when something should be done to improve the long-term lot of those children whose homes seem unable to provide the kind of intellectual stimulation and emotional warmth and security available to their more favoured peers" (Barney, 1976: 4)

Considerations of this kind may seem somewhat belated, coming as they do soon after the death of Maria Montessori (1870-1952), whose philosophy of a child-centred educational method had spread world-wide, and a century after the death of Friedrich Froebel (1782-1852), the "father" of the kindergarten movement. Voluntary associations for the promotion of pre-school education had been slowly growing since 1899, when the ideas of Pestalozzi (1746-1827) and Froebel were first canvassed with a New Zealand audience.

> From the opening of the first free kindergarten in Dunedin in 1899 until the 1940s progress was slow. . . . [In] 1926 the New Zealand Free Kindergarten was formed. The *Yearbook of Statistics* makes no mention of kindergartens until 1938, although from 1904 small Government grants had been made, and kindergartens had been "recognised" and inspected since 1909. In 1936 there were 34 free kindergartens catering for some 1,700 children. . . . In the twelve years from 1936, kindergarten enrolments doubled, and another 12 years later, in 1960, they showed a further four-fold increase (Calvert, 1968: 72).

Two separate ventures set up during World War II, one by Gwen Somerset at the Feilding Community Centre (Campbell, 1945: 23-28), and the other by a group of women seeking mutual support in child care, merged together in 1946 to form a second major pre-school movement, the Nursery Play Centre Federation. By 1966, there were more than 350 play centres run as parent co-operatives and catering for between twelve and thirty children each (Calvert, 1968: 71).

The state began to take a serious interest in pre-school education in 1947, when the first Supervisor of Pre-school Services was appointed to the Head Office of the Department of Education, as a consequence of the report of a consultative committee on *Pre-school Education*. "This report advocated that the State take over the existing pre-school services in order that the services could 'be expanded until they are available to every child whose parents wish to use them'" (Calvert, 1968: 72). The Currie Commission was of the same opinion, and, although it had no mandate to examine pre-school education,

made the point that ". . . this area of education is beginning to develop organic connections with New Zealand education as a whole and with the primary school system in particular" (R.C.E., 1962: 198). The report went on to say that it believed both kindergartens and play centres to be of very great value to the New Zealand community, that it had considered such influences during the evidence about the connection between early childhood experience and delinquency, and it suggested ways in which the state might make a greater financial contribution to these voluntary organizations.

By the end of the period under review, the state had its hand in pre-school enterprises to a very large measure, in financial assistance in one form or another, in teacher training and in advisory and support services (AJHR, 1971: E.1). Pre-school specialists could now be added to the expanding list of professions which this period of psychological welfarism had nurtured.

The Last Industrial School

This section concludes the story of industrial schools in New Zealand society, the principal operations of which were dealt with in Chapter IV. Histories of the City of Wanganui and of the Industrial School make no attempt to conceal its origins. One history wrote about the "Church of England Native Industrial School" and gave its major milestones up to the citizens' petition of the 1860s, but without comment on the validity of the operation of the trust grant (Chapple and Veitch, 1939: 85-7). A similar supposedly neutral view was taken in a more recent history of Wanganui, which acknowledged the origins of the school and applauded its elitist nature in the following terms:

> The Rev. B. V. Harvey [appointed in 1882] proved to be an excellent choice as headmaster. It was he who foresaw the destiny of the school and pointed out to the Trustees that they could best be carrying out the objects of the Trust by taking a broader view and reorganising the school. This was done by making it an institution which would in no way come into direct competition with the excellent State schools then in operation. . . . it gradually developed in depth and numbers . . . and is now regarded as one of the premier boarding schools in New Zealand (Smart and Bates, 1972: 214).

More recently, a man who was first a pupil and later a teacher at Wanganui Collegiate, glossed the origins of the school briefly as ". . . established very humbly by Selwyn. . . . An Act of Parliament in 1952 removed the obligation to give industrial training and made provision for scholarships for boys from the Pacific Islands" (MacLean, 1982: 67).

This whole episode is, however, more than simply the story of one school. It has significance as the embodiment of state policies and practices which sought to secure and maintain privileges for one class of children at the expense of another. It is neccessary to consider first the petition of the citizens of Wanganui, which was debated but lay unresolved in the New Zealand Parliament from its presentation in 1872 until its resolution in 1952. Upon the passing that year of the *Wanganui Collegiate Empowering Act*, the school earlier set up to provide education and industrial training for the children of the poor of the township of Wanganui ceased to be an industrial school.

The petition. Rumblings amongst the disgruntled residents of Wanganui had been taken into account in evidence taken by the Commission of Inquiry into the condition and nature of Trust Estates for Religious, Charitable, and Educational Purposes, in October, 1869, and reported to Parliament in their third, and final report, the following year (AJHR, 1870, A.3: v,1). The Commission's view, reported in full in Chapter IV, can be summarised as a recommendation for the state to vary the trust deed so that ". . . the annual proceeds should be appropriated as to give the inhabitants of every denomination and every class a fair share in the benefits accruing from the Grant" (AJHR, 1870, A.3: v).

A petition had in 1872 between transmitted by the Mayor and citizens of Wanganui to the Wellington Provinical Council, and sent on by Superintendent Fitzherbert to the Colonial Secretary in April that year. Not receiving an acknowledgement, the Superintendent wrote again in June, 1872, and received a reply to both letters on the 31 January, 1873 (AJHR, 1875, I.5: 2-3). The matter

next came before the House again when the report of the Petitions Committee was tabled in 1875. The Wanganui citizens' petition generally reiterated the view of the earlier Commission of Inquiry, and added that the conditions of the grant were ignored and that the income had been

> . . . devoted towards the maintenance of a "Collegiate School" where the children of well-to-do persons are instructed principally in the dead languages and mathematics. . . . That the failure to observe the industrial conditions of the grant, and the general departure from the intention of the granter, has deprived the poorer classes of the borough of a valuable educational provision for their children, and imposed on the rest of the inhabitants the burden of providing in other ways for the support of poor and destitute children. That in consequence of so large a part of the best portion of the borough being let in large blocks, and used as grazing ground, notwithstanding the fact of its having the greatest frontage to the main thoroughfare, the progress of the borough is materially affected. That, in consequence of the streets originally laid off through the estate having been cancelled by the grant, great damage is done to surrounding property, and to the general prosperity of the borough (AJHR, 1875, I.5: 2).

Thus, it became clear that it was not only altruism towards the poor that motivated the Wanganui residents, but also resentment that a seemingly inert and absentee trust board held the best land and forestalled the entrepreneurship and speculation that was a feature of provincial development. Furthermore, a device which they believed would "save the rates" by reducing charitable aid was shown to be diverted to other purposes.

It was at this point that the first of several Parliamentary squabbles on this issue became public. In their memorial, the Wanganui petitioners had suggested ". . . that gentlemen versed in legal matters, and well qualified to form an opinion, have, from time to time, expressed a conviction that the grant in question is absolutely null and invalid in law". Superintendent Fitzherbert reported in his April, 1872, letter to the Colonial Secretary that he concurred ". . . in the expressions therein contained, and shall be glad if the General Government will take the opinion of the Attorney-General as to the best means to be adopted in order to carry out the wishes of the memorialists" (AJHR, 1875, I.5: 2). An opinion was taken of the Attorney General, but the Executive

voted not to reveal it, even to the Public Petitions Committee of Parliament. This affronted the Chairman, Thomas Kelly, M. P., and his Committee's report lambasted the Government.

> The Committee regret that, owing to the refusal of the Government to furnish, for the information of the Committee, a copy of the opinion of the Attorney-General on the Industrial School Estate at Wanganui, they are not in full possession of the the legal bearings as could be desired. The Committee, however, are satisfied that the spirit and intention of the grant have not been fulfilled . . . .
>
> In the opinion of this committee the Government ought to take the subject of this trust into their most serious consideration during the recess, with a view to such legislative action next session as may be required for placing the valuable estate in question under trustees periodically elected, and for ensuring the application of the proceeds to the purposes originally intended by the grant (AJHR, 1875, I.5: 1)

Government remained steadfast in its refusal to reveal the opinion of the Attorney-General on the merits of the petition and the validity of the operation of the trust grant. In September, 1875, Kelly successfully moved in the House that ". . . it is desirable that the Public Petitions Committee should be furnished with a copy of the Attorney-General's opinion on the case" (NZPD, XIX, 1875: pp), and the following month the Colonial Secretary gave him the Executive's reply. The basis for their reticence was the view of the Attorney-General that it was improper for the government to advise sectional interests how to act against a body legitimately endowed by government; to do so would prejudice any subsequent actions. To support that line of reasoning, Kelly was supplied with the following extract from the opinion:

> Those who have presented the memorial to the Superintendent allege that the school maintained at Wanganui by the trustees of certain land at Wanganui granted by the Crown upon trust, "is not conducted in terms of the grant." They also state that it is alleged to be "absolutely null and invalid," and that it can be set aside by the adoption of proper means.
>
> They state that they desire to see the "endowment applied to educational purposes in a broad, liberal, unsectarian manner."
>
> The memorialists do not state any facts which prove the assertion that

> the school " is not conducted in terms of the grant," nor do they state the grounds upon which the grant is deemed to be invalid.
>
> In 1867 some of the inhabitants of Wanganui had an interview with the Hon. the Prime Minister, and it was pointed out to them that, if the trustees are not conducting the school in accordance with the trust, the proper remedy was by writ in the Supreme Court.
>
> In my opinion that is the proper remedy now. Those who conceive that the trustees are guilty of a breach of trust may commence a suit in the name of the Attorney-General, with his leave, in which suit they will be realtors (AJHR, 1875, I.5: 4).

The litigation remedy was not pursued. Instead, the Wanganui residents' cause was taken up by the local Member of Parliament, Mr John Bryce, with assistance from the retiring Premier, Sir Julius Vogel. Bryce and Vogel jointly wrote in July, 1876, to the Anglican Bishop of Wellington, who, it was alleged by them, had orally indicated that he was willing to support a compromise on the petitioners' claims. Their letter suggested that a Bill should be introduced to vest the School Estate in a committee of local persons, some elected by rate-payers, some nominated by the Bishop from amongst local residents and the mayor and the county chairman *ex officio.* The Bishop rebuffed their written submission in plain terms, writing ". . . that the plan proposed involves a very dangerous principle, and, if sanctioned by the legislature, would tend to destroy confidence in the security of property held under a crown grant, whether for trust or for any other purpose" (NZPD, XXI, 1876: 68). On the first occasion that this exchange was revealed in Parliament, Bryce and the Premier had colluded in using question time to air the issue, only to have Sir George Grey object and ask the Speaker to rule that debatable issues had been introduced. A few weeks later, Bryce and Vogel traversed the same material again when Bryces's *Wanganui Endowed School Bill* was read for the second and final time (NZPD, XXI, 1876: 591-620).

This failed Bill was a watershed decision, for it had represented the chance for government to face the allegations of abuse, neglect and opportunism revealed in the reports of the *Commission of Inquiry into Religious, Charitable and Educational Trusts* (AJHR, 1869, A.5; AJHR, 1969, A.5a; AJHR, 1870,

A.3). Given the direction that the *Education Act* was to take the following year, the last term of the *Continuous Ministry* (Dalziel, 1981: 105), the Bill might also have provided a debating platform for the educational secularists, as Davis called them (1966: 126-38). The debate on this Bill, on 24 August, 1876, occupied the House for over five hours up to 1.00am on the following morning. It was on this night that the Grey made his *Civilization of the Pacific* declaration (reported above on p.87). Unlike other opposing speakers, Grey made no attempt to suggest that the aim of the trust grant had been fulfilled. The gist of his lengthy, rambling discourse was that as Governor he had always intended that the church should take a leadership role in education and that the Wanganui Endowed School should be valued by the state and allowed to continue, having proved itself to be a fine institution. Moreover, ". . . he would be sorry indeed if, unnecessarily, any steps were taken to destroy what at least was a vision so good in itself that he thought that all men who wished well to their country might . . . indulge in" (NZPD, XXI, 1876: 597). As if an appeal to patriotism was insufficient, Grey went on to suggest that Parliament should resolve the issue by passing over the Wanganui estate to the township and recompense the Church of England by giving it a similar grant elsewhere.

Other speakers addressed the fundamental issues more directly, and the following debating points emerged. Was this to be seen as an attack upon the Church of England in particular, and, if so, how should grants to other churches be now viewed? Was the trust first and foremost a general educational grant to the residents of Wanganui and only secondarily in the trusteeship of the Church of England? Could the Crown repossess a trust grant simply because it had since become intrinsically valuable? Were the industrial training provisions of the trust deed still relevant twenty-four years later? It seems clear that the Bill was shelved for two main reasons. First, members were uncertain whether Parliament actually had the power to vary the trust deed for the reasons stated, and, even if it could be so argued, the claims which would follow such a precedent may be horrendously contentious. Second, there was a body of opinion in the House which believed that the operation of a collegiate school instructing in "dead languages and mathematics" was a just and proper use of

the trust deed.

With the advent of the *Education Act, 1877*, the question of revenue for schools ceased to be a local issue and became a concern of general government. The cleavage between state and private schools became more pronounced, and the endowments funding state-supported schools, and university colleges, were later to be largely offset against their running grants. Thus, for state institutions endowments became merely an alternative source of funding which allowed them to preserve a certain character and prestige rather than the enjoyment of a markedly higher income.

The solution. Rather symbolically, it was a thrust of the psychological expansionism movement in education, the growth of intermediate schools, which provided the key for the Wanganui Industrial School to slough off its humble origins and to be reconstituted in 1952 as a collegiate school. Although dating first from 1922 and based only slightly on the American junior high school, schools "intermediate" between primary and secondary levels were not common in New Zealand until after World War Two (Watson, 1964: 36). Their chief functions were described as provision of ". . . a broad, expansive and common curriculum that will encourage the growth of individual talents and interests . . . and to ease the transition from primary to secondary schooling" (Ewing, 1969: 39). Seeking to rebuild an intermediate school in the city of Wanganui, the Department of Education approached the Board of Governors of Wanganui Industrial School (by that time calling itself Wanganui Collegiate) for the purchase of some hectares of bare land thought to be a suitable site. Immediately seizing its chance, the Board magnanimously offered the land at a reduced cost to the Department in return for sponsorship by the Minister of Education of a Bill to vary the trust deed, last debated in 1876. This time, however, Parliament was not being asked to withdraw management of the trust grant but to regularise the variations that had crept into its administration since the Crown gift was made exactly 100 years before. And, this time, political attitudes had polarised and hardened so that it is easier to discern the distance between the two. The Parliamentary debates on this Bill

are classic arguments of collectivism and anti-collectivism as they relate to the two worlds of childhood.

The Minister of Education (Hon. Mr Algie) in his introduction to the Bill calculated that it would enable government ". . . to get for £60,000 some valuable properties in the City of Wanganui which a year ago were valued at £85,000 . . . what we have to do for the trustees in order to get their assent to a very handsome transaction . . . is to ask this house to agree to a variation in the trusts under which this land was given" (NZPD, 298 , 1952: 1696). He was of the opinion that if the trustees went to the Supreme Court, they would get a variation very close to the trust they wanted as they were working under a deed of trust which was very old. Furthermore, he said:

> There is another respect in which they hold the whip-hand over me as the representative of the Government. They could say if they wished, "those buildings of yours are on our land. In a very few years the leases will be up and those buildings will revert to us; and, if they do, you have no right of purchase. Your only right is to take the land compulsorily under the Public Works Act." There are pros and cons on both sides (NZPD, 298 , 1952: 1697).

As with earlier debates, much emphasis was given to the interpretation of the phrase "education of the children of our subjects of all races and of children of other poor and destitute persons being inhabitants of the islands of the Pacific Ocean", in the text of the original trust. Additionally, the intent, execution and contemporary relevance of the injunction that the trust run so long as the trustees continue to provide religious education, industrial training, and instruction in the English language, were debated.

The two principal speakers for the Labour Opposition were the Right Hon. Walter Nash, Leader of the Opposition, and the Rev. Clyde Carr, Member for Timaru. Both based their attacks upon the exclusiveness of the school and its failure to fulfil its trust deed. "I cannot find a scholar from an ordinary school in New Zealand who has, because his parents have been poor, been enabled to go to the Wanganui Collegiate School and get the benefits of the facilities

provided out of the revenues of this land," claimed Nash (NZPD, 298, 1952: 1701). Carr portrayed the school as aping those British public schools of Harrow, Winchester and Eton, and as that

> . . . of the elect, the elite. People who have passed through those schools have open sesame to Parliament and to certain distinctions, obligations and . . . "privileges". . . . Wanganui College has been characterised throughout as a college for the education of the better class of people, of the comfortably situated people, to put it perhaps rather moderately. The children of poor and destitute persons have never had any particular right or opportunity to attend to avail themselves of the provisions in the original trust. The ideas of Bishop Selwyn have not been fulfilled (NZPD, 298, 1952: 1704).

Government members defended both the Bill and the College. Mr Blair Tennant (Palmerston North) was sorry to see that members of the Opposition " . . . have taken advantage of this Bill to stir up again class distinction and class hatred" (NZPD, 298, 1952: 1705). Mr Tom Shand (Malborough) thought that Wanganui Collegiate had " . . . made a wonderful contribution to our well-being. Those who fail to recognise that I can only describe as being mean in their attitude" (NZPD, 298, 1952: 1710). The member for Otahuhu, Mr Leon Gotz, who identified himself as only the third old boy in the hundred year history of Wanganui Collegiate to enter Parliament, claimed that changes in educational provision had overtaken the earlier requirements and that private schools of this type provided not only an alternative form of education but also a preparatory experience for men who were to assume leadership positions in New Zealand society. His claims, a classic polemic for structured inequality, were delivered as follows:

> Now, our private schools here in New Zealand, based as they are on the system of great public schools in Britain, serve a purpose which is unique in their sphere. Some parents prefer that their children should not have a State education. They prefer that they should have an individualistic education. They prefer perhaps that they should have a religious education, or an education tinged with more religious flavour than is the education which they would gain in State schools. Many parents consider that character is better built in a private school than than in a public school. They consider that their children will be out of the rut, that they will be able to rise, perhaps, to higher positions, greater

> careers, than they would under the normal trend of education. They consider, too, that at a private school their children will be able to study subjects different from those provided in the ordinary school curriculum., that they will perhaps develop a different outlook. Then, too, most of the private schools are boarding establishments and in boarding establishments different traditions, different ideas, are moulded into children from those which apply in day schools. There is also the advantage of private schools that life-long friendships are built by the boys and girls by the closer association than is possible during the school hours. . . .
>
> It is in these private schools—one of which is Wanganui—that our boys are grown into men. It is from these schools that that they have gone out into a world in which they have made their mark. On our Judicial Bench, amongst farmers, lawyers, in the Public Service, in all the professions, in every walk of life, one finds boys from our private schools. . . .
>
> The private schools of this country, as in the Old Country, have played their part, and will continue to turn out men ever ready to lead or to serve their country or their fellow-men, unless perchance some monstrous State machine should endeavour to curtail their freedom and purpose (NZPD, 298, 1952: 1708-9).

The third reading of the Bill followed three weeks later. Nash was the only Opposition member to speak against it, although he stated that he would not vote against it. The substance of his address was that he thought that at some time in the future the Church of England authorities would have a crisis of conscience and find ways to make reparation for the misapplication of revenue from the trust grant (NZPD, 298, 1952: 2002). So, in the event, the "monstrous State machine" did not prevail; the empowering Act was passed, and the dispute was over. The whole incident allows the inference to be drawn that the Government of the early 1950s was patently anti-collectivist in its educational policies and that it encouraged and supported practices which discriminated between the children of the poor and those of the well-to-do. Finally, apologists for the private school system show how the psychotherapeutic thrust of the post-war period had little relevance to its aims. It was obviously not faced with the state machine's lot which included the difficult, the deprived, the under-achieving pupil, the handicapped and the "reluctant learner", as this

statement of aims shows:

> The independent schools may be few in number in this land, and in the opinion of many ignorant people, insignificant, the refuge of the wealthy, the home of privilege: but, by and large, they provide an alternative, at a price, to a State system which is by no means the answer which many people are seeking for their children's education. They are in most cases, schools where the individual counts, where the majority of teachers have religious beliefs, and where religion is taught and lived; where an attempt is made to keep the standards and values in a quickly changing world, and where a number of dedicated men and women labour (Hornsby, 1968: 110).

These were sentiments that Sir George Grey might have been proud to affirm. Although his ideal for industrial schools was never realised, the values he espoused lived on in the private schools.

HEALTH

As in the fields of welfare and education, the theme for the health enterprise during this period was that of mental health, an emphasis upon the psychological and emotional dimensions of life. That theme was equally apparent in practices for children in the health sector.

But the standard of physical health of children had slipped, and one of the immediate post-war concerns for the Department of Health was to see nutrition for the average New Zealand child put back on to its pre-war scale. The Division of School Hygiene had established in its 1945 survey that the cumulative effects of food shortages and high prices since 1940 were reflected in impaired nutritional standards of children. The percentage of those deemed to be suffering from subnormal nutrition was found to have risen from 4.23% in 1940 to 9.35% in 1945. Part of the rise was attributed to the discontinuation of the school milk supply in periods of shortage, especially in the winter months when milk was reaching only half of all children. In some districts it ceased at the end of autumn. The rate for pre-school children was even higher: 10.34%

were found malnourished. Dental health for children was showing little improvement, except that the spread of school dental clinics meant that fillings were becoming more common than the practice of extracting decayed permanent teeth. Health services generally had wound down because of the personnel shortages (AJHR, 1945, H.31: 6).

That state of affairs was soon rectified, and on all fronts, from the reduction of infant mortality rates to successful immunisation campaigns, young New Zealanders became generally healthier than at any time in the past. Free hospital treatment and free primary medical care allowed parents of all income levels to learn new patterns of interacting with the family doctor and medical services, unlike the retreat shown by the parenting generation of the 1930s.

Mental Health

In an influential essay first published in 1950, Beaglehole set out the prospects for a new vision of mental health for New Zealand. This emphasised the psychological origins of many disorders and the ways in which the new therapies could bring greater understanding of prevention and treatment of such disorders. When that publication was later reissued, he also foresaw the introduction of a nationwide mental health movement (Beaglehole, 1958). Around the same time, a plea was also being made to increase the quantity and quality of child psychiatric services in the country, which was evaluated at that time as being primitive and falling far short of what might be expected for a public health service (Ironside, 1955: 223-7).

1961 was the World Mental Health Year. The occasion was suitably honoured by the Canterbury Mental Health Council, which organised a high-level conference for professional groups held in Christchurch. Over sixty New Zealand participants together with seven foreign experts gathered to hear a wide array of presentations on issues of mental health, the proceedings of which were published by the sponsoring council (Lawrence, 1963). Children figured prominently in the topics delivered to the conference, with the first six

papers being devoted to the *Foundations and development of healthy personality* (Lawrence, 1963: 33-118). Other papers addressed the mental health implications of *Nursing the sick child* (Stapleton, 1963: 136-54), *Mental health in education* (Priestley, 1963: 209-32), *The gifted child at home and school* (Parkyn, 1963: 267-93), *Social maladjustment* (Stoller, 1963: 369-55), *The counselling of parents and relatives of the disturbed child* (Robb, 1963: 430-39). The opening address by the Minister of Health conveyed a warm appreciation of the idea of positive mental health but a guarded reaction to narrow concentrations of technical expertise; he wanted to see churches, homes and schools all involved in mental health promotion. With such endorsement, the psychotherapeutic ideal was taken up as an official direction for new practices.

The functional differentiation of helping services noted in the introduction to this chapter and observed in welfare and education was in similar fashion a feature of the mental health services. Writing in 1961, the Director of the Division of Mental Health, Department of Health, made some observations about trends in mental health services in New Zealand, with particular reference to the the role and structure of psychiatric hospitals.

> New Zealand has a number of difficulties, like every country, and one or two advantages. One of the biggest advantages at the present time is that we have at least not inherited some of the problems of the older countries, and have never delevoped the very large isolated type of centralized hospital. . . . If we go back to about 1938, we find that the admission rate was something in the vicinity of 1,430 a year; by 1958 the rate was something like 3,780 and at the present time it is over 4,400. But both the structure of the admission rate and also what happens to the patients afterwards, have undergone a total change during this period . . . . the number of medical staff has nearly doubled in two years, and the number of social workers, including those with social science diplomas, has risen rapidly from a small beginning. We have set up a training school for occupational therapists which supplies the whole Dominion and is now handling some ninety students. This was a bold venture, for it was set up in 1942 in the middle of the war. Quite recently, there has been a planned effort to increase the output of trained clinical psychologists in order to meet the growing need for them. In the nursing field, at least half the total nursing staff are graduate nurses, and although we are short, we are not nearly as short as we were, even less so on the male side. . . . Trained people are the

> basis of any effective mental health service (Blake-Palmer, 1963: 509-10).

Mental health for children. Overseas, children with emotional, intellectual and behaviour problems had been catered for since the 1920s in child guidance clinics, as they were known in the USA. There was an interest in New Zealand in the 1950s for that model to supersede the clinics described in Chapter VI, and *child health clinics* began to take shape, on a model different from the earlier university clinics and psychological clinics. From small beginnings in Auckland in 1955, these were initially designed as a supplementary service to the School Medical Service, Department of Health, to receive referrals of children with special needs requiring pædiatric expertise although eventually they became a type of specialist mental health service for children and their families.

> The work of the first pædiatrician in the Auckland service was diagnostic and educational and was designed to assist Health Department personnel. After a short time, because of lack of demand within the school medical service, general practitioners were permitted to make referrals, and behaviour problems gradually took precedence over physical problems. After six months, a psychologist from the Education Department joined the pædiatrician on a part-time basis. The Mental Hygiene Division of the Health Department then made a psychiatrist available and thus the child health clinic finally superseded the original psychological clinic. Later, a social worker was appointed, thus completing the Auckland "team" which had been conceived by Dr [A. W. S.] Thompson [Medical Officer of Health] and which formed the model for other child health clinics. Subsequently, clinics were established in Christchurch (1953), Hamilton (1953), Wellington (1954), Whangarei (1956), and Palmerston North (1958) (Jack, 1972: 172-3).

Apart from their transfer from the Department of Health to hospitals boards during the overall devolution of institutions in 1972 (NZOYB, 1972: 144), this has remained the pattern for child health clinics. "They are staffed by a team consisting of a pediatrician, psychiatrist, psychologist, play therapist, and social worker. Children are referred to these clinics through their family doctor" (NZOYB, 1970: 139). Previous entries from 1965 to 1969 in the Official Yearbook had added the qualification on referral by the family doctor ". . . if there is one" (NZOYB, 1965, *et seq.*).

Health camps. This voluntary movement, whose origins were outlined in Chapter VI, continued to extend progressively during this post-war period with increasing recognition and involvement by the Department of Health. Health camps and their referral agents also became imbued with the psychotherapeutic ideal at this time, and henceforth the ostensible reasons for admitting children broadened to include symptoms of psychological and emotional disorders.

> The health camp originally catered for children suffering from malnutrition, sub-vitality, debility, tuberculosis contacts and children with chest complaints but subtle important changes were now evident.
>
> The second world war (1939-45) was a catalyst in the transformation from the preoccupation with physical illness to a recognition of emotional illness. . . . The early fifties brought improvements in physical child health but a new concern was emerging—psychological child health (Report of the Committee to Review the Children's Health Camp Movement, 1984: 14-5).

Health camps were in financial difficulty by 1957, and it was suggested that if they were prepared to broaden their admission criteria, under the direction of the Department of Health, Cabinet might be favourably disposed to additional state funding for those purposes. A closed committee was convened which brought down a confidential report in 1958. It concluded:

> . . . that children from poor, unhappy and broken homes or from homes where mothers needed a rest or children living in isolated districts would benefit from a stay in a health camp.
>
> The report was kept confidential and the only action taken as a result of the report was the creation of the role of Principal at camps (Report of the Committee to Review the Children's Health Camp Movement, 1984: 15).

Greater changes were still to come, precipated by what the Review Committee (1984) called "the 1968-69 crisis", when the King George V Memorial Fund was almost exhausted and a new direction was required. The Movement consented to a survey by the Department of Health to undertake an

assessment for Cabinet on the purpose and management of the camps. In the case of the child inmates, the Department found that, while there was a wide range of reasons for admission, most children exhibited physical health problems. Physical deficits or adverse home environment were present for most of those admitted for behavioural or emotional problems. In late 1968, the government agreed that health camps should continue to be part of a child health service and took over the financial responsibilty by underwriting operating costs. This replaced the former state subsidy payable in relation to the revenue received from the sale of health stamps.

A reorganisation of the administration of health camps was effected by the *Children's Health Camps Act, 1972*, which created a board with country-wide responsibility for the overall running of camps through local *camp committees.* Camps continued to take children with a diverse range of symptoms, although the trend was to exclude those with major psychological, behavioural or emotional problems.

As a direct cause and effect, the unionization of health camp staff under the Public Service Association in 1980 brought significant changes to improve the operation and management of camps. That alone, however, was not enough to forestall yet another crisis of confidence in the movement as it lost its traditional support without a renewal of younger committee members and volunteers; donations and health stamp sales were ever declining. It was against this background that the Review Committee was established by the Minister of Health to whom it reported in 1984.

CONCLUSION

Unlike the earlier periods surveyed, this post-war period saw no completely fresh innovations in legislation or departments of state so far as they affected children: structures stayed much the same, but practices changed. Similarly, in the non-state sector the few new service organizations which

appeared were filling needs which had lately arisen from growing expectations and changing social patterns. In both sectors the administrative plea was for greater co-ordination of existing services, and these were realised through the creation of advisory committees and inter-departmental working parties in the state sector and the creation of local and national co-ordinating committees and councils in the non-state arena (Oram, 1969: 223-32). Having in the introduction to this chapter argued against Dunstall's *continuity* theme, I affirm my characterisation of this period as being *discontinuous* in practices governing children, based upon a palpable shift in values and in methods of dealing with children. Both of these dimensions had their origins in the upheaval of the war and the unique conjunction of unprecedented prosperity, state guaranteed health and income maintenance, and rising expectations. Some of these were progressive and others regressive in terms of children's rights. The issue of a shifting value base is examined first.

Expressive accounts of conflicting ideologies were reported in the two central enquiries examined in this chapter, the Mazengarb Committee and the Currie Commission. In an earlier essay on this topic, I dismissed the Mazengarb Inquiry as "the moralist's credo", because I believed it to be out of step with the prevailing climate of opinion which looked more to the origins of behaviour than to means of suppressing it (McDonald, 1978: 50). More dispassionately, one must evaluate its purposes as a policy instrument and its influences upon subsequent practices.

In the first place, it is highly significant that New Zealand should be the first country in the world to set up a committee to investigate the sex life of its children and young persons. This followed a long tradition of state intervention in the lives of children and was consonant with the paternalistic and controlling features of much of its legislation to govern children. The worst implication was, not that children were being naughty, but that the state was in danger of losing control of its practices to regulate them. Thus, several purposes could be served by opening up the topic for public submissions, foremost of which was to divert attention away from the inability of the rule of law to prevent such an

occurrence. As with other bodies of this type, notably the numerous Royal Commissions and committees of inquiry, the co-opting of prominent, respectable community leaders—Mazengarb was the founder of *Heritage* (Mazengarb, 1962) as well as a leading lawyer—gives an immediate palliative dimension to a pressing social issue whilst at the same time allowing room for officials behind the scene to take stock of the political choices.

In the second place, deeper below the surface issues, both the moral delinquency incident and the Commission on Education appeared to be forums in which the battle could be fought between philosophic schisms and polarised models of the nature of the human condition, each struggling to become the accepted foundations of social control. Such a schism was showing itself in post-war New Zealand between what I call the *conformity model* and the *diversity model*. On the one side, was a value system that believed in order, stability and strong adherence to traditional moral conventions firmly rooted, especially in the case of child-rearing patterns, in obedience and individual responsibility. These were the positions patently held by the Chairman and members of the Special Commitee on Moral Delinquency and expressed in both direct and oblique fashion in its report. On the other side, was a value system which was predicated on a variety of human experience, acknowledgement of wide individual differences and a belief that while childhood experience was critical in determining adult personality it was also a period to be enjoyed for its own sake. In that view, fulfilment was more important than achievement. These ideas were buttressed by the new emphasis upon psychological inquiry being practised in schools and state institutions and endorsed by the Currie Commission but which were feared by the Mazengarb Inquiry Report to be instruments of moral decay. While, of course, the conformity model has never entirely disappeared and is still discernible in 1982, events have shown that methods of social control have come to favour the diversity pattern.

Paradoxically, young persons had had their term of dependency extended to age fifteen at the time of attaining a measure of financial independence through full employment and the high earnings of themselves

and their parents. The arguments for the connection between affluence of this sort and juvenile delinquency rates have been shown to have some explanatory power. The youth culture that emerged at this time was different in kind from those instances of youth rebellion recorded throughout history, because for the first time young people were not trying to copy the excesses of adult behaviour but rather to invent patterns of behaviour which would alienate them from the adult world. Commercialisation of this movement and social circumstances, such as increased attendance at secondary schools, combined to foster the exclusive association of young people. In the face of such rapid social change, the Currie Report tried to hold on to what was most enabling from traditional values while recognising that the world, New Zealand in particular, had changed. What had been lost on the one side was moral certitude, the impermeability of social divisions, and the unity of family life as the prime source of personal identity. The counter argument on the other side was based on the belief that "science"—the psychotherapeutic ideal—would provide the explanation and the cure to private crises.

Turning now to the second dimension of this break with past practices, it is, of course, the functional differentiation theory which best explains the extraordinary growth in state-employed therapists and specialists intervening in the lives of children. At the risk of labouring the point, within the space of two decades, many new vocations and services for children were created and specialised training courses in the social and psychological sciences made their appearance. Some of the compression in that development was a function of New Zealand's general technological lag noted by Rae (1981). Whichever way it is viewed, when compared with the model of governing children during, say the mid-1930s, it represented a quantum leap.

Childhood was viewed as a stage of life crucial to later personality development, and to be enjoyed for its own sake, so that the emergent rights of children during this period stressed the right to self-fulfilment through planned experience. For those of the second world of childhood, the right to individual attention and treatment was foremost. In this way, further dimensions were

added to the recognised implicit and explicit rights of children. They had emerged as individuals owing to the acceptance of the psychotherapeutic ideal and a more fluid range of social values, but not as a social collectivity with rights determined on the same reasoning as those for adults. However, that surge for change beginning with World War Two and culminating in the turmoil of the 1960s, set the stage for a serious reconsideration of the status of children and young persons.

CHAPTER VIII

THE CHILD AS CITIZEN, 1969—1982

This chapter brings to a close the periods chosen to be examined. Here, I will present the evidence for my claim that from 1969 onwards policies and practices on children were introduced that must, for the first time, be described as based on logic similar to those governing adults. Although the influence of this movement has stopped far short of according children all the civil rights enjoyed by adults, it expressed a way of thinking about the rights of children which became commonplace rather than eccentric. This advocacy for children's rights, the debate it generated and the degree to which it was incorporated into policy mechanisms, seemed to convey an approach to policy on children which approximated the approach used for all citizens. Therefore, I characterise the period as that of the *child as citizen.*

Worldwide, the 1960s and through into the 1970s was the age of dissent and protest. Such questioning drew attention to the treatment of women and blacks, the disadvantaged and the oppressed and, at the end of that queue, finally to the position of children (Feshbach and Feshbach, 1978b: 1; Franklin, 1986: 1; Freeman, 1983: 1). New Zealand was no exception to this progression and, in the view of the first Chief Human Rights Commissioner, New Zealand movements are a reflection of overseas developments and activities (Downey, 1983: 25). In our case, as I shall discuss, strident advocacy on behalf of children often involved claims of both racism and ageism. The first New Zealand published articles specifically on the rights of children appeared during the period under review. Equally, the volume of writing and research on children with a "rights" orientation increased. Much of this trend must be attributed to the sponsorship occasioned by the events of the International Year of the Child, but some, such as reports on advocacy by lawyers, pre-dated or

are independent of that influence. One lawyer, D. R. Lange, newly elected to Parliament and later to become Prime Minister, highlighted children's rights in his maiden speech to the House: ". . . I express my disgust that we still do not give children the same rights and protections as are afforded animals under the *Animal Protection Act.* It is an offence under that Act to terrify an animal. I can find no similar provision in any statute relating to children" (NZPD, 1977, 410: 144).

The rate of social change itself had been used as a justification for changed practices. The *Child Welfare Act, 1925*, was the principal law governing children for fifty years until replaced by the *Children and Young Persons Act, 1974.* Ten years later, a working party was set up to review it and to bring down a draft bill. Faced with explaining why it was proposed to rewrite legislation for children after such a short period of operation, the working party commented upon both the rate and the direction of change. It stated that:

> This is because frequent overhaul of social legislation becomes necessary at times of rapid social, demographic and technological change. There has been an accelerated change in New Zealand society over the past decade that has brought about a remarkable alteration in patterns of living and the structure of the family. Over this period we have seen a dramatic change in the role and status of women, the emergence of unemployment as a major social problem, and a new technology which is beginning to affect the lives of everybody. There is no indication that the pace of change is slackening and it may well be that further change to legislation affecting children will be required before long. . . . There has also been a growing realisation that benevolently intended official measures employed to rehabilitate children in difficulty can violate the children's civil rights by introducing a level of interference within their lives that is out of proportion to the seriousness of the behaviour that initially prompted the intervention. Providing justice for children as well as supplying necessary assistance requires that those who come to official notice for offending chould have the full protection of legal due process. There is also a concern that justice should be afforded to those who have been offended against as well as to the offender, which indicates the need for a process that seeks to give justice to both sides (DSW, 1984: 1).

Thus, the idea of the child as citizen is founded upon a discernible shift away from the twin notions of psychological manipulation and therapeutic

intervention as the favoured modes of understanding and governing the behaviour of children, and a move towards a *social justice* model. In this model, emphasis is placed upon the rights of children as individuals and as a societal interest group entitled to an even-handed system of justice. The model suggests that justice is achieved only by examining the structures of the legal, welfare and socialisation agencies, and by substituting for state paternalism similar guarantees about the right to liberty and fair trial accorded adults (Morris *et al.*, 1980). This is supported in the New Zealand context by the theory that the existing social system maintains a given level of deviance as a result of identifiable structural inequalities, such as race and class factors (Sutherland, 1973). This reaction against psychological explanations of behaviour has led to lines of enquiry based on situational explanations, appealing more to social stratification features, such as Hampton's *labelling theory* studies (1973; 1975). Revealing the fashion in which labels are acquired, reinforced and internalised has given a new slant to the relationship between the juvenile justice system and its clients. Examination of the processing of juveniles through the Children and Young Person's Courts has led to the proposition that individual behaviour is a function of the social system within which it is evaluated.

After a brief review of the wider social context in which these policies and practices shifted direction, this chapter provides a discussion on the changing status of children, an account of the state as arbiter of provisions and caregiver to atypical children, a detailed examination of the emergence of new forms of formal and informal advocacy for children, and a summing up of the effects of these changed practices on children in general and some special groups in particular. It concludes by pulling together these findings as they affect policies and children's rights.

THE SOCIAL CONTEXT

The themes which emerge from contemporary New Zealand history are population, economic and social changes, polarization and protest on public

issues, fear and uncertainty about the ability of the state to intervene effectively, and a growing trend towards consultation and public accountability.

Post-war New Zealand had an immediate and sustained population growth, mainly by increased Pakeha fertility until 1962, when there was a sharp drop. Maori family size was larger and Maori population growth was attributed initially to substantially lower mortality rates than in the past. Annual population figures for the whole country continued to grow until in the late sixties they were offset by emigration losses. Then, ". . . in 1978-79, for the first time in New Zealand's history, the net loss of population by migration (mainly to Australia) exceeded the gain from natural increase" (Dunstall, 1981: 401).

From a pre-war situation where a third of all people lived in the country, the spread of population showed an urban trend, attributed to a reduced demand for rural labour as a result of technological advances and to rising aspirations and economic growth. By 1976 only one sixth of the people lived in rural areas. A discernible northward drift occurred and has continued unabated until a quarter of the New Zealand population of 3.2 million live in the greater Auckland area and approximately half of the total number live above the 39° latitude line intersecting the North Island at Lake Taupo (NZOYB, 1983: 65). The greatest change was in the Maori population. In 1926 15.6% of all Maori lived in urban areas; by the 1981 Census that proportion had risen to 78.5%, a shift described as ". . . a population trend of considerable sociological significance" (NZOYB, 1983: 86).

Two other changes of considerable sociological significance for children occurred in this period. The first of these was the introduction in 1973 of the Domestic Purposes Benefit as a statutory cash benefit within the *Social Security Act*. The second was the changed base of family incomes as a result of unemployment.

Apart from the three-year term of the Third Labour Government, 1972-75, this period opened and closed under National Party administrations. After a

thirty year period of government interventionism to enhance full-employment policies, the New Zealand community of the late 1960s was faced with the failure of those policies, growing unemployment and few promises of a remedy.

> The first bout of unemployment now appears to have been one symptom of a much larger difficulty in the New Zealand economy and society. Little evidence is available that economists of the 1960s foresaw these difficulties. By the end of the 1970s diverse sources such as the Federation of Labour, academics, and the Planning Council recognised the existence of major structural problems in the economy . . . . Additionally, they perceived that a failure to deal with these problems would lead to declining living standards. In this light, the crises of 1967-68 appears to have been a sign that the limits of a particular model of economic-social development had been reached. The organisational and institutional-decisional interventions of the State were able, through borrowing and job creation, to maintain low unemployment during the the term of the Third Labour Government, but these also appeared to have reached their limits (Dwyer, 1984: 135).

With no sign of a solution to this social ill, the problems were believed to have intensified and to have become permanent. "The tide has turned towards reaction. After the last vain spurt of social democracy, Norman Kirk's brief rule, the country fell into the hands of harder men, whose way with problems have been less caring and and no more successful" (Oliver, 1981: 458). Oliver goes on to paint a picture of a society riven by " . . . movements of opinion on either side of urgent public issues" each showing moral zeal and a sense of unease (1981: 458). Children were the subject of many of these public issues.

The Status of Children

It was a change in the status of children which first indicated to me that the year 1969 was an appropriate threshhold to mark the transition between one period and another. Given that the first attempt at governing the life chances of children in the new colony was Grey's 1846 Ordinance for *The relief of destitute persons and illegitimate children*, the passing into obsolescence of the status of illegitimacy seems a red-letter day for children. The *Status of children Act, 1969*, aimed to remove all legal disabilities for children born out of wedlock

and for the first time promised all children in New Zealand equal status (Cameron, 1969). Under the heading *All children of equal status*, s.3(1) of the Act reads: "For all the purposes of the law of New Zealand the relationship between every person and his father and mother shall be determined irrespective whether the father or mother are or have been married to each other, and all other relationships shall be determined accordingly" (SNZ, 1969: 18). The term *illegitimate* will no doubt linger on in common parlance, although it has been largely replaced by the terms *out of wedlock* and *ex-nuptial birth*, both, in the current view, less stigmatising . Some social scientists were not so ready to agree that the changed terminology was helpful to the scientific study of children's birth status and associated factors, as these comments show:

> It is evident that the widely held notion of an illegitimate child as the child of an 'unmarried mother' is imprecise. On the one hand it is possible for an illegimate child to be born to a married women (and data reported subsequently will show that a considerable number of such cases occur); on the other hand it is possible for the child of an unmarried woman to be legitimate (where 'unmarried' includes women who are widowed, separated or divorced). . . . While the authors are sympathetic with the aims of the 1969 legislation and the spirit behind the Act, the use of the terms 'illegitimate' and 'illegitimacy' are difficult to avoid because the suggested alternatives are either not strictly correct or are inordinately clumsy to use. For example, the term 'ex-nuptial' as a synonym of 'illegitimate' is open to misinterpretation as it implies that the mother of the child is not married. Alternatively, the usage 'a child born out-of-wedlock', if used repeatedly, results in circuitous and repetitious writing. A further problem with these usages is that neither gives rise to an acceptable noun corresponding to the term 'illegitimacy' (O'Neill *et al.*, 1976: 6-7).

The following year, the age of contractual adulthood was lowered from twenty-one to twenty years by the *Age of Majority Act. 1970* . Alterations to civil status are never made lightly, and there is inevitably some lag between the pressure for such policy changes and their implementation. It seems fair to conclude that it represented a community feeling of the increased social maturity of young adults. Amongst other considerations, not only did it mark recognition of the readiness of young people to assume adult rights and responsibilities, but it was also symbolic of a renewed interest in the rights of

legal minors.

Children and Social Security. The status of children was directly and indirectly a topic for consideration in the Report of the Royal Commission on Social Security (1972).[1] The Royal Commission gave careful consideration to the issue of *Moral judgments and conjugal status* as factors influencing entitlement to state assistance through pensions and benefits (R.C.S.S.,1972: 348-54). From the introduction of the *Old Age Pensions Act, 1898*, all pensions had been tagged with so-called *morals clauses* based on the English Poor Law divisions of charitable aid into deserving and undeserving cases. Discrimination of this kind seemed well entrenched in New Zealand practices.

> A strenuous fear of 'pauperisation' underlay the desire to concentrate assistance upon the deserving—and to apply severe discipline to the undeserving. The ideal of self-help is basic here. The deserving were those who wanted to help themselves but could not, or, if they were children, those who could still be equipped to help themselves. The most obviously undeserving were those who preferred not to try to help themselves, the work-shy; lacking self-discipline, they were proper objects of external discipline. . . . The sanctity of benevolence, the classification into deserving and undeserving, the zeal for external discipline where self-discipline was lacking—these three values were deeply implanted in the welfare provisions of the pre-war period [1914]. They are far from dead in the 1970s. The hesitant welfare extensions of the 1920s and the desperate improvisations of the early 1930s reflect something of their continuing power (Oliver, 1977: 8-9).

The *Social Security Act, 1938*, had perpetuated this discrimination against the undeserving poor by requiring that applicants had to be of "good moral character and sober habits". That requirement was re-enacted in the *morals clause* in the consolidating *Social Security Act, 1964*, which provided in s.74 that the authorities could, at their discretion, refuse to grant a benefit, terminate an existing one, or grant payment at a reduced rate where they were satisfied, "(b) That the applicant is not of good moral character and sober habits, or is living on a domestic basis as husband and wife with a person to whom he or

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[1] Citations of this report are hereafter abbreviated as R.C.S.S.,1972.

she is not married" (SNZ, 1964: 136).

The people who suffered most by this discrimination were the children of parents of discredited *moral character*. As noted in Chapter V, adopted and illegitimate children were specifically excluded from entitlements as dependants of widows or as orphans when those pensions were first introduced. Similarly, refusal to grant benefits to mothers because of moral defects placed children at risk of being declared indigent and being taken into the care of the state. It is my belief that Hanson was quite ill-informed when she wrote of that section of the1964 Act shown in the preceding paragraph that ". . . the clause came to have very little effect in practice" (Hanson, 1980: 135). During my time as a CWO in the 1960s, it was not uncommon for the morals clause to be used by Social Security Department officials as a lever to bring pressure to bear on female clients whom they believed to be feckless mothers or spendthrifts. Indeed, it was this type of intervention in the lives of mothers alone that often resulted in the family being transferred from Social Security benefit status to the Needy Family Scheme of the Child Welfare Division—an income-maintenance and casework system for multi-problem families parallel to the social security scheme. Moreover, one can hardly concur with Hanson's conclusion that the policy decision to legislate in 1972 on the Royal Commission's recom- mendation to delete the morals clause ". . . seemed to indicate a final dispensing with the official attitude that the poor must be 'deserving' before they could receive state assistance" (Hanson, 1980: 136). A case in point, underlining Oliver's contention that such attitudes were far from dead in the 1970s, was to arise with the 1977 review of the Domestic Purposes Benefit, the origins, application and significance of which are dealt with later in this chapter.

The status of children was also a major consideration of the Royal Commission on Contraception, Sterilisation and Abortion, which sat from June, 1975, and reported in March, 1977. In the summary to its report, the Commission stated that there were two matters at the heart of the abortion

controversy on which it was asked to adjudicate. These were the status of the unborn child and the rights of the pregnant woman (R.C.C.S.A., 1977: 24).[2] The status and capacity of young people, in regard to the issues traversed by the Commission, impinge on this inquiry as well, and that topic is returned to shortly.

The unborn child. The second item of the Commission's terms of reference specifically required it to inquire into and report on the status of the unborn child, and a full chapter, 14, was devoted to that topic. There, it says that the status of the unborn child is the very cornerstone of the abortion argument, because if the unborn child has no status then the other issues, especially that of the rights of pregnant women, resolve themselves. Where a legal status is conferred on the unborn child, then some resolution of the potentially competing claims must be found. The Commission codified these combinations in the following way:

> Legislation on abortion is usually regarded as being liberal, moderate, or restrictive, according to the status given to the unborn child. The only need for legislative interference in the sphere of abortion where no status is given to the unborn child would be to protect the health of the pregnant woman. In that case, what is regarded as a liberal code will result. Legislative interference which recognises that the unborn child has some status, but that the pregnant woman has rights, which may at times take precedence over the unborn child, will result in a moderate code. But where the purpose of legislative action is to confer on the unborn child a status which at least equals the rights of the pregnant woman, a restrictive abortion code will result (R.C.C.S.A., 1977:180).

The Commission's report then went on to review the biological evidence, approaches by different "schools" of thought on the question of whether or not the unborn child can be said to have a necessary status. It stated that the social, philosophical and theological debate on the matter had not produced an acceptable solution to the matter of what is human or potentially human. Next, the Commission reviewed the existing law on the status of the unborn child and

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2 Abbreviated in this chapter as R.C.C.S.A.

found that it was accorded recognition in the criminal law, property law and the law of tort. Since the passing of the first criminal law statute in New Zealand, protection for the unborn child had been given by legislating against abortion. Under New Zealand law of property, a child conceived but not yet born can own property as a successor to a settled estate, or as a beneficiary under a trust. At the time of the Commission's report, there had been no New Zealand case in the law of tort where an unborn child had been the plaintiff. Nor had any legal jurisdictions in other countries recognised the right of the unborn child to sue. Compensation for pre-natal harm sustained is well-recognised—the thalidomide cases being the most well known, although liability was not admitted by the drug manufacturers—so that while "the child is recognised by the law before birth . . . its capacity to sue does not come into being until it is born alive" (R.C.C.S.A., 1977: 192).

Consistent with its overall approach to a moderate abortion policy for New Zealand, the Commission made the following five conclusions from the evidence reviewed:

> 1. The fetus has a status from implantation which entitles it to preservation and protection.
> 2. This status does not confer upon it an absolute right to life. If it did, then human life with full conscious development would have to yield to it, and a greater value might be placed on fetal life with its potential still unformed than on human life with full conscious development.
> 3. The unborn child, as one of the weakest, the most vulnerable, and most defenceless forms of humanity, should receive protection.
> 4. That protection should not be absolute but should yield in the face of compelling competing interests.
> 5. The measure of that protection can only be decided after the nature of those competing rights have been examined (R.C.C.S.A., 1977: 192).

Affirmation of this summary as an acceptable statement on the status of the unborn child followed in 1980, when the Human Rights Commission was asked by the Society for the Protection of the Unborn Child (SPUC) for a formal declaration. SPUC had been a principal evidentiary party to the proceedings of the R.C.C.S.A., pursuing a course designed to influence the Commission to recommend to government a restrictive abortion policy. Its advocacy on this

matter is included in the third section of this chapter. Disaffected by the recommendations of the R.C.C.S.A. and government's subsequent endorsement of them, SPUC sought a remedy through representations to the Human Rights Commission with three requests:

(a) A formal declaration that human rights in regard to the protection of the human person under law begin at conception.
(b) Asking that the Human Rights Commission remind the Government that the United Nations Declaration of the Rights of the Child should be observed in New Zealand in regard to safeguards and care and legal protection for the unborn.
(c) Pointing out that unless life is protected from conception there is no other stage of pregnancy at which criminal sanctions can be applied with any degree of credibility and enforcibility (HRC, 1980: 1)

The Human Rights Commission considered the representations in the context of international instruments on human rights, The European Convention on Human Rights of 1950, and the American Convention on Human Rights of 1969, because the full title of its empowering Act requires as a purpose ". . . the advancement of human rights in New Zealand in accordance with the United Nations International Covenants on Human Rights" (SNZ, 1977: 49). It noted also that a clause similar to that proposed by SPUC had been debated during human rights legislation before the Australian Federal Parliament and rejected. Drawing attention to the summary constructed by the R.C.C.S.A. on the status of the unborn child—printed above—the Commission thought that even were it appropriate for it to consider making the kind of declaration sought by SPUC, it would have to institute its own enquiry. That would have to be of the same scope as the R.C.C.S.A., a course that even if desirable would hardly be practicable. The Commission summarised its position with these paragraphs:

> Finally it is noted that the Human Rights Commission is asked to make a formal declaration concerning what it considers should be one particular meaning of human rights. It is not a sort of political party with an ideology of its own. Its function is to look at the application and enforcement of these basic rights and fundamental freedoms agreed by the international community, in relation to particular situations in the New Zealand context. As for the expression used in the Declaration of the Rights of the Child the words speak for themselves. They do not call

for any explanatory gloss by the Human Rights Commission.

> In all circumstances therefore the Human Rights Commission expresses no view one way or the other on the issues raised, and does not propose to make a formal declaration as requested, nor to report to Government in the terms set out in the representations of the Society for the Protection of the Unborn Child (HRC, 1980: 3).

The Commission's published response to the SPUC representations remains the last word on the topic. Questions on the status of the unborn child remain within the guidelines of the Declaration of the Rights of the Child, and the R.C.C.S.A. statement remains the interpretation of the preamble to the Declaration which emphasises special safeguards and care before as well as after birth.

Young persons and contraception, sterilisation and abortion. The sexual activity of young persons and children poses social and moral questions of immense complexity, made even more difficult by the long-standing New Zealand policy decision to set the age of sexual consent at age sixteen. That threshold, like other arbitrary categories of legal capacity, becomes at one and the same time a liberating event for some young persons and a repressive instrument of state control for others. Adolescent sexual behaviour raises the issues of guidance on human relations, legal and moral sanctions in the interests of the public health, the rights of young persons to control their own fertility, and adequate care and protection for ex-nuptial children born to girls who are legally under the age of sexual consent and legally too young to cohabit with their partners.

The R.C.C.S.A. received more submissions on the supply of contraceptives and contraceptive education for the young than any other topic. The Commission took the evidence from the experiences of other countries where sex education and availability of contraception advice and appliances for the young had been permitted, to show mixed outcomes. Generally, such practices did not result in a lowering of the incidence of venereal disease or the rate of ex-nuptial births to under-age girls. Once again, it counselled a moderate line

in its recommendations on these areas. It suggested changes in the law which would make it possible for young persons to be given sex education by teachers and professionals, and to be supplied with contraceptives under medical supervision. The guardians of sexually active intellectually- handicapped women and girls were to be permitted to administer contraceptives (R.C.C.S.A., 1977: 53-87). Sterilisation of the intellectually handicapped, however, it thought should rest upon an order made by a Court on application by the parent, guardian or superintendent of the patient's institution. That recommendation has not been legislated for, and these cases remain an issue between the parent or guardian and their medical advisers (R.C.C.S.A., 1977: 128).

The Commission was not required to investigate or recommend on the issue of abortion for under-age pregnant girls, although it did review the rate of such ex-nuptial pregnancies in its general review of the social, moral and legal issues (R.C.C.S.A., 1977: 53-87). The age of the pregnant woman is immaterial to the law governing abortion in New Zealand, although it may be a feature which the Abortion Supervisory Panel and the consultant physician would take into account alongside the customary medical indications.

The status of children and young persons, their legal capacity and their rights, were the focus for much activity during this period. The next section takes up these questions from the viewpoint of the state.

DILEMMAS OF STATE PATERNALISM

Some significant changes in the structures of state machinery of income support for children, child welfare, juvenile offending, and guardianship and custody disputes took place in the 1970s. The area of income maintenance for children and their caregivers underwent a revolutionary change with the introduction of the Domestic Purposes Benefit in 1973. Within three years it was

seized upon as a symbol of state over-indulgence, and a backlash of hardened attitudes resulted in a more reactionary policy. The Child Welfare Division was swallowed up in a big new department, the empowering *Child Welfare Act, 1925*, was rewritten and fresh means of processing juvenile offenders were introduced. During this same period, consultation, decision making and accountability by the departments of state responsible for children's policy began to take forms more in keeping with the growing fashion for openness and greater responsiveness to consumer opinion. Those trends resulted in the practices of the child welfare authorities coming under closer scrutiny than ever before, targeted for public criticism and official review by Parliamentary grievance instruments and, by 1982, under considerable pressure for far-reaching changes.

As a parallel development, pressure for a revision of the law governing family relations grew during the late 1970s and, in the context of cultural changes in family patterns, the state had to reappraise its functions as a moderator of parental and children's rights. These situations are explained by the contradictory expectations held of the state as protector of children's rights on the one hand, and as guardian of children on the other hand. Conflicting roles created an insoluble dualism between the political and the operational arms of the state. This section examines those tensions and developments as they centred around the Child Welfare Division and the new Department of Social Welfare. It then deals with the new developments in family law.

The Department of Social Welfare

The 1969 election manifesto of the National Party, subsequently returned as the government that year, announced the intention to amalgamate the Child Welfare Division of the Department of Education with the Social Security Department to form a new Department of Social Welfare. The Labour Opposition made similar promises. The *Department of Social Welfare Act, 1971*, came into effect on 1 April, 1972, and the Child Welfare Division, after nintey-eight years of Education administration in one form or another, ceased to

exist. Its operations were subsumed into the Social Work Division, together with Benefits and Pensions and Administration, one of three divisions of the new Department. The sequence of events from 1954 to 1972, leading up to the creation of the Department of Social Welfare, was summarised in the introduction to the Department's first annual report (AJHR, 1973, E.12). How policy-making and child welfare practices were affected by these changes is the focus of the next section.

After amalgamation. The *Department of Social Welfare Act, 1971*, empowered the new department to take over, amongst other tasks, all the statutory functions of the Social Security Department and the Child Welfare Division. The Director-General replaced the role of Superintendent as guardian of state wards and children temporarily in care. Child welfare work continued to be executed through some thirty district offices and sixteen short-stay institutions—Boys' and Girls' Homes—and five institutions for extended care and training, a structure not much changed from the Beck era of the 1930s (AJHR, 1973, E.12: 88). Hence, in the short term, there was little noticeable difference in direct services to children. The event did, however, give the opportunity to use the Act to tidy up some long-standing practices by legislating for policies which had never been statutorily sanctioned under the *Child Welfare Act, 1925*. The key practice was that of so-called *preventive work* which everyone presumed was a worthy operation of the Child Welfare Division, but for which it had lacked legislative or fiscal authority. Preventive work comprised all those activities that could not be classified as arising from official sources, and follow-up work where the child or family had no court-imposed status with the Division.

The department's own view was that, despite some transitional workload problems, the amalgamation of the two enterprises was effected relatively easily. Starting with less than the optimum social work staff numbers was a handicap, because

> . . . workloads in the social work division were increasing and the

> change in the role associated with the formation of the department created new challenges for social workers. The staff of institutions were probably affected less by the amalgamation, but overcrowding and a greater sophistication in the youngsters coming into institutions brought their problems (AJHR, 1973, E.12: 7).

The opinion of serving officers of that period indicated that the change acted to benefit child welfare services and their clients (Luckock, 1987). Against the prevailing movement by Cabinet to limit staff numbers, the new department was granted an increase of 218 new staff in its first year of operation (AJHR, 1973, E.12: 7). The parsimony of Department of Education administration was contrasted with more liberal budgetary provisions within the new department, which disbursed the largest single governmental vote, mostly on statutory benefits and pensions. As one small example, the practice of reassigning Department of Education unroadworthy school buses for child care use ceased in favour of the purchase of new vehicles. Administration was more personalised and adventurous, and the Social Work Division underwent a moderate growth phase in the years 1972 to 1982. The department gave this account of major developments and its activities over the first decade:

- The improvement of social intelligence and co-ordination through councils serviced by the department such as:
  Social Development Council
  New Zealand Council of Social Service
  Social Work Training Council
  Advisory Council for the Community Welfare of Disabled Persons
  Social Sciences Research Fund Committee
- The passing of the Children and Young Persons Act of 1974 with its emphasis on preventive work to promote personal and family well-being and the introduction of Children's Boards as an alternative procedure for dealing with children.
- The passing in 1975 of the Disabled Persons Community Welfare Act and the progressive introduction of new programmes to assist the disabled.
- The introduction of improvements in social work practice, in foster care, and in residential services designed to provide a better service to children in care.
- A wider use of consultative planning and review procedures which provide for a closer interaction with the voluntary social service sector.
- Changes in management and administrative practices to improve costs and effectiveness including extensive use of the department's

computer network, more effective staff training, the introduction of the quality control programme, the widespread application of direct credit payments, and the establishment of the Social Programme Evaluation Unit.

- Improvements in the local availability of services in the Auckland area through the establishment of new district and area welfare offices under the co-ordinated planning and direction of the department's Auckland regional office.
- A serious adverse development has been the the change in the New Zealand economy which has led to the relatively high unemployment of recent years (AJHR, 1982, E.12: 5).

Those developments which bear upon policies and practices for children are now examined.

The Domestic Purposes Benefit. Prior to 1973, the state through the social security system had begun to accept income maintenance responsiblity for children being cared for by one parent, and for people whose parenting tasks had kept them out of the workforce. These contingencies were dealt with by ill-defined criteria and by squeezing needy applicants into a variety of existing statutory benefits or, more commonly, the emergency benefit category. Eligibility for the latter could be determined only on grounds of hardship and individual circumstances and, therefore, there was a more stringent onus on the claimant to establish need than existed with the firm criteria of statutory benefits. For example, it even appeared to foreign observers that New Zealand had no maternity benefit payable to otherwise unsupported nursing mothers (Mishra, 1978: 93). Where need was demonstrated, the administrative rule was that an emergency unemployment benefit was routinely payable for the first three months after a child's birth, provided the child survived. Single expectant mothers who entered a "special home available for their confinement" were also granted an emergency benefit during their stay (Social Security Department, 1950: 89). From 1968, it was decided as an administrative practice to

> . . . group emergency benefits payable to women who have lost the regular support of their husbands and who qualify for an emergency benefit, under one generic term of " domestic purposes benefit". The classes covered are: (a) Women with dependent children who have lost the regular support of their husbands (including *de facto* husbands),

> and those women with dependent children whose husbands are in prison; (b) women (including *de facto* wives) without dependent children who have lost the support of their husbands and who are unfit or unable to work; (c) unmarried mothers with dependent children who have no other adequate means of support (R.C.S.S., 1972: 243).

The Royal Commission endorsed this practice and recommended that a statutory domestic purposes benefit, subject to the usual tests, be payable to solo parents, to women caring for an infirm or sick person and for women whose previous domestic commitments have affected their ability to obtain employment. This was adopted as policy and with minor alterations passed into law as the Domestic Purposes Benefit (DPB) in April, 1973

The revolutionary nature of the DPB lay in its effect of changing the *unit of welfare* of the New Zealand income maintenance system. Overnight, it largely dispensed with the concept of the *male breadwinner* as the pivot of family support, bringing to an end a principle continuous from the Elizabethan Poor Law of 1601. In this new system the family became irrelevant to the welfare support of children—and others of dependent status—and the unit of welfare became the dependent individual, now guaranteed support by the state. Previously children had been embedded within family dependency; now support for them and their caregivers (not necessarily a parent) was taken over as a responsibility of the state. From the child's point of view, an adult caregiver was now to be paid to fulfil that role and to remain out of the workforce. It separated out the twin concerns of relief and liability for relief, hitherto inseparably intertwined. Need for support became the criterion of demarcation not now contaminated by considerations of moral worth. Elsewhere, I have argued that the DPB was the milestone that marked the transition of New Zealand society from a welfare state to an advanced welfare state (McDonald and Willmott, 1980: 38).

For reasons yet to be fully understood, the introduction of the Domestic Purposes Benefit failed to attract the attention that it deserved as the single most important shift in welfare philosophy in New Zealand since the *Social*

Security Act, 1938. To speculate on that omission, it may be that the DPB was seen as the culmination of creeping incrementalism and was viewed as the natural conclusion to its precursors. Other explanations are that it was one change amongst many in an era of shifting values and fluid practices (Easton, 1981: 17), that it was seen as a conservative measure with little to redress the inequality of income distribution and merely shifted poor people from one category of poverty to another, that in the short term it failed to expunge entirely the concept of the *male breadwinner*, and that in cohabiting arrangements, ". . . the man was [still] responsible for the support of the solo mother and her children. . . . even if the children were not his own" (Koopman-Boyden and Scott, 1984: 133). Other people, with a conservative value framework, may have viewed it as a temporary aberration of the political terrain.

The backlash. The principle of the Domestic Purposes Benefit that the caregivers of dependent children should be paid to remain out of the workforce to fulfill that role, was not a policy decision welcomed by all. In effect, the DPB was a guarantee of support for women who chose to have children without either marriage, or the partnership of a *male breadwinner.* Worse yet, to the conservative value system, it created immorality and dependency by encouraging young, single women to become mothers without ever entering the workforce. The controversy over the DPB, identified by Koopman-Boyden and Scott (1984: 1330, began in earnest in 1976, when governmental concern at the large number of beneficiaries, and the social trends that they represented, was mentioned in the Budget. But it was much more than an ideological split on whether or not solo mothers deserved state support. The issue, and the reason for devoting space to it here, was peppered with fundamental value choices on the status and rights of children.

The morality dimensions of eligibility for state assistance by way of a pension or benefit having been legislated out of existence with the *Social Security Amendment Act, 1973*, moral crusaders had to find more oblique avenues to rebut the policy. A political champion to that cause was found when the National Government was returned to power at the end of 1975 after a term

in opposition. The Minister of Social Welfare in the new Cabinet, the Hon. H. J. (Bert) Walker, quickly made it plain that he was opposed to the DPB payment to young, single women. In a series of press releases, he also accused Domestic Purposes beneficaries of widespread fraud by claiming payments when they were having conjugal relations with intermittently resident partners. A Ministerial Review Committee was established in 1976 under s.13 of the *Department of Social Welfare Act* to look into the operation of the DPB Before it's report was made public,

> Months crawled by with Walker periodically attacking the DPB and announcing that the report would be made public 'soon'. . . . Walker had repeatedly made statements which made it plain that he considered too many women were leaving their husbands, too many single women were keeping their children. He repeatedly and publicly accused solo mothers of bludging off the taxpayers by cheating on benefit eligibility. . . . [and] repeatedly expressed alarm at the increasing payments of DPB since the introduction of this benefit, and invited the public to spy on their solo-parent neighbours and report those who had male visitors to the Social Welfare Department (Shawyer, 1979: 53).

The Report of the Domestic Purposes Benefit Review Committee was released to the public late in 1977.[3] The Committee found that from a notional base in March,1965, to March, 1976, the number of DPB's in force had increased from 1,622 to 23,047, and that expenditure had risen in that period from nearly one million dollars to just on fifty million dollars. The contents of the report, and the announcement by the Minister that he intended to implement four selected recommendations immediately, led to the picketing of homes of some Committee members, and to public demonstrations in the Auckland, Wellington and Christchurch, by beneficiaries and their supporters (O'Reagan, 1986: 11; Shannon and Webb, 1980: 111; Shawyer, 1979: 55). The New Zealand Association of Social Workers issued a press statement condemning the Minister's action and a rebuttal of his rationale appeared in the Association's journal the following month (Johnston, 1977: 33-4).

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[3] The Domestic Purposes Benefit Review Committee, and its 1977 report, are hereafter abbrieviated to D.P.B.R.C..

The two changes which brought the greatest resistance from beneficiary groups were the decision to reduce the rate of benefit payable during the first six months of eligibility and, in the case of solo mothers or fathers, the requirement that it would be paid only after the applicant had presented herself/himself for counselling. "The controversy" was fuelled by some fiery, perhaps intemperate, retorts, as this extract shows:

> The rumours had obviously been correct. Walker's Baby Breeding and Wife Retention Scheme . . . is a disgusting combination of regurgitated soup-kitchen mentality, self-righteous moralizing and anti-woman sentiment. . . . I'm surprised that Bert Walker and his henchmen haven't simply added an amendment to the Act which nullifies it completely (Shawyer, 1979: 55-6.)

Only a small fraction of the benefits in force did not include dependent children. That being the case, the decision to reduce the amount payable was a direct deficit from the living standards enjoyed by children. However, the most revealing observations made by the D.P.B.R.C. about the status of children were those relating to ex-nuptial children and the adolescent, unmarried mother. Traditionally in Pakeha society, illegitimate children represented a social problem which was grounded in the resistance of the community to provide for such unwanted infants. When family fertility was high, surplus children had neither economic value to families with many children already nor, because of their diminished status, value to childless couples (Benet, 1976: 81-82). They were a burden to be absorbed by the working class that bred them or, in the last resort, a charge on a harsh and unforgiving charity system. The trend to a smaller family size, improved family planning techniques and rising standards of living saw a reversal of the value of illegimate children in post-war New Zealand. While the expectation still prevailed that solo mothers of any age should surrender their children for adoption, the fit between demand and supply was for a short period in equilibrium. However, the demand for white, new-born infants quickly outstripped the number available and long waiting lists with adoption agencies were commonplace by the mid-1960s.

The annual number of adoption placements made by Magistrates Courts reached a peak in 1971, and thereafter showed a steady decline (AJHR, 1975, E.12: 33). At the same time there was a gradual decline in the proportion of children adopted by strangers, and the balance reversed in 1975 when more orders were made for non-strangers (52.4%) than for strangers (47.6%). Once begun, that trend accelerated rapidly (Griffith, 1981: A5). Thus, by the time the D.P.B.R.C. was deliberating, the shortfall in new-born babies available for adoption was a cause of real distress to childless couples, and non-traditional arrangements—of older, handicapped, or mixed-race children—were becoming the only option. This state of affairs lay behind much of the Committee thinking and it noted that it may seem to have devoted a disproportionate amount of their report to that matter (D.P.B.R.C., 1977: 19). In particular, it raised the question whether it was in the best interests of children to be reared by solo parents, an issue that was put to them by a number of women's organizations. Its doubts about the capacities of solo parents were reinforced by research findings on ex-nuptial children, recently reported from a Child Welfare Division survey undertaken in 1970 (O'Neill *et al.*, 1976). Of most alarm to the Committee, was the trend for young unmarried women to keep their children.

> There is not much doubt in our minds that the availability and generous nature of the domestic purposes benefit structure not only diminishes the fear of pregnancy but can also be very attractive to a young teenager, and it is clear in many instances that the amount of money that can be received from the benefit is higher than the girl herself could earn in normal employment. No one wishes to see a child deprived by reason of too limited a benefit but also no one wishes to see a child disadvantaged a little later on in life by reason only of the mother's financial ability to retain it (D.P.B.R.C., 1977: 18).

The Committee stopped short of making explicit recommendations on its beliefs about the connection between an enabling rate of benefit and the trend to casual pregnancy and continuing mothering by girls on the one hand, and the needs of children for two parents and the unrequited demand for adoptive infants by married couples on the other hand. That reticence was tactical rather than problematic, for the Committee noted that the information received and views arrived at bore strongly on other recommendations (D.P.B.R.C.,

1977: 19). Unmistakably, the Committee was of the opinion that the DPB encouraged promiscuity and unnecessary dependency amongst teenage girls. Further, it clearly suggested that ex-nuptial children born to young mothers had their interests best served by adoption, for which there were many suitable applicants. Some disappointment, perhaps even chagrin, that it could not demand government legislation in that direction underlies its circumlocutions around the topic. In the event, the only course open to it was to require that the state agency responsible for both adoption and benefit payments brought pressure to bear through "counselling" and limited-term payments, as these two recommendations show:

> (10) That in the case of the unmarried mother, counselling by a social worker (not necessarily from the Department [of Social Welfare]) should take place before the birth of the child with a view to ensuring that she is fully aware of all the considerations on which her own decision whether to keep the child or make it available for adoption is made.
>
> (11) That in the case of the unmarried mother who decides to keep her child and applies for the domestic purposes benefit, a fixed-term benefit should be granted, say for 3 months in such cases, possibly at reduced rates depending on the circumstances, with counselling continuing during this period, at the end of which similar options would be open to the Department as in the case of a separated parent (D.P.B.R.C., 1977: 49).

Rationally, there can be no argument with the idea that the state should provide counselling and guidance to the mothers of ex-nuptial children. Whether they cared to avail themselves of it, and whether social workers could be expected to amputate children from their natural parents, in the face of evidence to the contrary (Davidson, 1980: 41-53), are moot points. Having come so close to a policy plan which would materially alter the status of at-risk ex-nuptial children, what forestalled the D.P.B.R.C. in carrying it through? At this point, that question posed by Shawyer is pertinent: why did not the Minister simply nullify the existing provisions by amending legislation? The best answer seemed to lie in the recognition that New Zealand was faced with an irreversible trend away from conventional forms of marriage and family. Neither

was this a phenomenon confined to the young and the poor. As the figures were to prove, a high and expanding rate of ex-nuptial births became the norm, and alternative schemes for the support of dependent children, leaving aside adoption, beyond the grasp of social reformers. A secondary explanation lay in an analysis of the Minister's role in scapegoating domestic purposes beneficiaries as moral frauds. During an administration in which it was important for Cabinet members to be seen to reduce public expenditure and purposefully tackle social issues, then one can say that the Minister acted appropriately and with great political acumen. His Review Committee was a clever device to apply pressure to the welfare system, and it fulfilled that task in no small measure.

In future years, in my opinion, the D.P.B.R.C. will be ranked alonside the Mazengarb Report (Chapter VII). Both were political devices to bring to a head disputatious social and moral issues; both dealt with sexual behaviour and the welfare of the young; both represented prevailing conservative and middle class views; the policy recommendations of both were wisps unable to endure the turbulence of social change; finally, both were abandoned by their political sponsors once the greatest advantage had been wrung from them. Within a few years of the D.P.B.R.C., it was business as usual for the state in its role of underwriting financial support for dependent children.

The *Children and Young Person's Act, 1974*. This Act came into force on 1 April, 1975, to be administered by the Department of Social Welfare. It specified five objects:

(a) To promote the well-being of children and young persons by assisting individuals, families, and communities to overcome social problems with which they are confronted:
(b) To promote the welfare of the family, to reduce the incidence of disruption of family relationships and to mitigate the effects of such disruption where it occurs:
(c) To assist parents in the discharge of their parental responsibilities:
(d) To encourage co-operation between agencies (whether administered by the Crown or not) whose activities directly affect

the well-being of the community and its children or young persons:

(e) To establish and promote, and to assist in the establishment and promotion of, services and facilities within the community designed to advance the well-being of children and young persons; and to co-ordinate the use of such services and facilities (SNZ, 1971, 72: 4-5).

In addition, the Act declared that the interests of the child or young persons shall be paramount in any course of action calculated to:

(a) Secure for the child or young person such care, guidance, and correction, as is necessary for the welfare of the child or young person and in the public interest; and

(b) Conserve or promote as far as may be possible a satisfactory relationship between the child or young person and other persons (whether within his family, his domestic environment, or the community at large) (SNZ, 1971, 72: 5).

Moreover, in s.5 the Director-General was expressly charged to undertake preventive work in the direct interests of children and young persons and, in s.6, to work for the promotion of community, family, and personal well-being. Noble sentiments of this kind were a far cry from the bland officialese of the *Child Welfare Act, 1925*, which they replaced.

The Act explicitly defined for the first time the meaning of *child* as a boy or girl under the age of fourteen years, and the meaning of *young person* as a boy or girl over the age of fourteen years but under the age of seventeen. Any person who is or has been married is expressly excluded. As well as creating new jurisdiction for these age groups, the Act spelt out more clearly than in the past parental responsibility for the supervision and care of children. Under s.9, it became an offence for a parent or adult acting *in loco parentis* to leave a child without making provision for its care and supervision. Clearer powers were given to the police in s.12 to uplift unaccompanied children found in public places if they had cause to suspect that it was associating with criminals or in an environment detrimental to its physical or moral well-being. In most other respects, the Act repeated and updated the provisions of the *Child Welfare Act, 1925*, and practices which had accreted around it. Ex-nuptial

births were to be notified to the authorities, and in s.10 they were still required to investigate the child's circumstances with a view to action if necessary.

Children's Boards were the major innovation of this Act. These extended the former provisions of liaison between the Youth Aid Section of the Police and the Departments of Social Welfare and Maori Affairs, and the discretion of joint conferences to deal with offences involving children other than by court appearances. To that original core was added a lay appointee chosen from a panel of residents of the local community. All matters involving children, that is, boys or girls under fourteen, had to be referred to Children's Boards in the first instance. In that sense,

> . . . they were built on a policy of active pursuit of informal alternatives to court action. Linked with this is the use of measures which will be voluntarily accepted by children and parents. The means chosen were a development of the conference system. As with so many previous experiments what at first looked like a radical change turns out, on closer examination, to consist in large measure of an expansion of pre-existing practices. Nevertheless, the fact that Boards hold informal hearings is innovative, as is the move towards community involvement represented by the presence of a local resident. Also, the Boards are able to reach decisions, (at least regarding cases not referred to court) whereas conferences merely made recommendations (Seymour, 1976: 49).

Boards had power to require children and parents to appear before them, to conduct further investigations and to call for reports. Only where there was no dispute as to the facts of the matter could a meeting be held or proceed; "not guilty" pleas had to be referred to the Children and Young Persons Court for adjudication. Emphasis was placed upon the need for informality and avoidance of any appearance that the board was a court. Admissions made before a board or in the course of inquiries on its behalf were deemed to be privileged, and could not be used in subsequent court hearings (SNZ, 1974: 72, s.13-19). The expectation was that consultation with families, revealing the problem and agreeing upon a course of action would in many cases be more fruitful than an adversary-type court hearing. "The basis of the Board's work is preventive and remedial and it is primarily designed to keep children who

commit offences out of Court, while at the same time bringing to the assistance of both child and family the resources of the helping professions" (Manchester, 1978: 62). Generally, those expectations were fulfilled.

Children's policy and services under seige. From the mid-1970s onward, the state in general and the Social Work Division of the Department of Social Welfare in particular came under attack from both conservative and progressive forces. These attacks can be categorised into those which called for overall changes in policy and legislation, and those which demanded reforms in specific child care practices; usually both elements were involved but the presenting issue might be at either level initially. The conservative examples are discussed first.

Criticisms of the child welfare services by the Police Force were hardly new because, unlike other government services, the Police Force never felt bound to the unwritten civil service rule of abstaining from public censure of other departments. As one illustration, the Lower Hutt police, angered by the failure of the Boys' Home management to hold young offenders placed in their care, joined forces with the local Opposition M. P. in a news media campaign during the lead-up to the 1972 Parliamentary elections. As a direct result, the Minister of Social Welfare ordered the Home temporarily closed as a political liability. While the police and child welfare workers amicably shared many common concerns about child abuse and protection work, on issues of *law and order* their views sometimes bifurcated into stereotypes of the "soft" welfare approach on the one hand and the vengeful, punitive attitude on the other. A dispute of that nature came to a head in 1975 over an apparent anomaly in the *Childrens and Young Persons Act, 1974.*

The anomaly was the protection from prosecution which was afforded young offenders who, being under age fourteen, were legally children and could not be charged with any offence. The prospect that in all cases such children would be dealt with under complaint proceedings against their parents or guardian, and that their disposition was likely to be the same, did nothing to

mollify those who thought a harder line ought to be taken. Their opinions were expressed forcefully and emotively where children were alleged to have committed serious crimes. Early on in the operation of the Act, the case of a thirteen-year-old boy murderer, immune to prosecution by reason of his age, was made the focus of police protests. After a sustained campaign in the news media and lobbying of Parliamentarians by the Police Association, the *Children and Young Persons Act* was amended in 1977 to allow children to be charged with manslaughter and murder. The reverse anomaly, denying the "softer" penalties to young persons found guilty of an offence attracted little notice. As a lawyer pointed out:

> A fourteen year old who is faced with a criminal charge which is denied might wish to elect a jury trial. If he is convicted following such a trial he will be virtually liable to only two basic sentences, a fine or imprisonment. None of the supervisory-type sentences which he could have received in the Childrens Court will be available, as was the case under the old Child Welfare Act 1925. This anomaly was specifically drawn to the the attention of Parliament by the Court of Appeal in 1977. Parliament, however, was not apparently concerned with amendments in the best interests of children but was instead more attracted by the vote-catching potential inherent in the amendment which it passed . . . making under-fourteen year olds once again subject to the criminal jurisdiction for the offences of murder and manslaughter (Knowles, 1980: 59)

The Department of Social Welfare, administering the *Children and Young Persons Act*, and closely identified with the practices that flowed from it, had to bear the brunt of political intransigence. But it was in its own guardianship role that the attack on its practices came thick and fast during the 1970s and early 1980s. Almost every area of its child welfare operations was the under pressure for change. Foster parents who carried the bulk of the everyday caring work for children in care became an organised force, lobbying on issues from tenure of children in their care to improved financial support. The adoptees' rights movement pressured the Department on all fronts in its search for the key that would open up the records which were denied them. The treatment of children and young persons in general, and in residential care in particular, was called into question and resulted in a number of official

inquiries. The disproportionate number of Maori children and youth in care was for the first time cogently put forward as a result of state policies rather than the pathology of Maori; the conclusion of racism seemed hard to rebut. Beginning in 1977 with the *Case of the Niuean Boy* (AJHR, 1977, E.25), the child welfare practices of DSW and other government services were investigated by the Auckland Committee on Racism and Discrimination (Anich and Nairn, 1980), the Human Rights Commission (HRC, 1982), by the Chief Ombudsman (Ombudsman, 1977), by a ministerial committee of inquiry (Report of the Committee to report to the Minister of Social Welfare, 1982), by departmental working parties (Department of Justice, 1981), and by the Race Relations Commissioner and his Advisory Committee (Tauroa, 1983). These investigations came to a peak in 1982, when DSW reported that "Consideration of the recommendations of the various reports are being considered by the Cabinet Committee on Family and Social Affairs" (AJHR, 1983, E.12: 29). All of this was the fruit of a style of advocacy for children not before seen in New Zealand, and arose directly from the maturing of a wider children's rights movement. That theme and the associated events is the subject of the part of this chapter on advocacy.

The State and Family Relations

As New Zealand divorce and separation laws became more liberal, they were accompanied by attempts to bring the welfare of children to a central consideration in all proceedings. Little by little, the state had relaxed its firm grip on the matrimonial contract, and with the advent of what can only be described as an assault on the institution of marriage, circumstances of the 1960s and 1970s demanded that judicial intervention in matrimonial proceedings be substantially revised. By 1976, it was becoming common practice in a few cities for the Court to appoint counsel for the children involved in such disputes. But the machinery itself was still unwieldy, of an adversarial nature, and hedged by delaying and abrasive tactics available to both parties.

An existing principle was re-enacted by the revised *Guardianship Act, 1968*, where the Court was required by s.23 to regard the welfare of the child

as the first and paramount consideration in applications for guardianship and custody. That direction was described by Jefferies J. as "A direction that is seductive in its simplicity but in reality conceals a most complex and far reaching judgement" (O'Reilly, 1980: 2). A further principle re-enacted in s. 23(2) was the mandatory duty to consult the child: " . . . the Court shall ascertain the wishes of the child if the child is able to express them and shall take account of them to such an extent as the Court thinks fit having regard to the age and maturity of the child" (SNZ, 1968: 63). This provision removed the former age threshhold of twelve years.

The good intentions of law reform were, however, frustrated by the context in which matrimonial disputes were heard. Helpful solutions were developed from practice wisdom and the increasing tendency to involve non-legal professionals in guardianship proceedings. Three fundamental criteria were suggested as critical to decision making. Firstly, that the most appropriate questions should be asked. As an example, inquiries about the nature of the relationship of the child with its contesting parents were thought to figure prominently. Secondly, that the most experienced personnel should be involved. This proposal challenged the Courts to open the way for psychologists and family counsellors to be called as expert witnesses. Thirdly, it was felt that the least time should be expended in bringing about a resolution. Because time is conceptually different for a child than an adult, the truism that "justice delayed is justice denied" was especially apposite for children in custody disputes (Williams, 1980: 18).

Following recommendations in the *Report of the Royal Commission on the Courts*, 1977, the government moved to create a new and special jurisdiction for marital and family matters, and in 1980 a new *Family Proceedings Act* was passed, to govern hearings in the Family Courts also created in that year, and operative from the end of 1981. These legislative innovations changed the traditional career of matrimonial disputes and the fortunes of children involved in them. Scope was given for the three criteria listed above to be fully implemented within an informal setting staffed by people, judges included,

suited by temperament and training for the task of helping families resolve their disputes. The cornerstone of the Family Court became the concept of mediation between the parties, who were required by s.45, *Family Proceedings Act, 1980*, to satisfy the Court that the best possible arrangements had been made for the welfare of children under sixteen (Stanton, 1981).

Throughout the country, Family Courts Associations were incorporated to bring together professionals from different disciplines working on common concerns. Over the first few years of operation of the Family Court, variations in practice and standards were brought to light and the advantages for children identified. This was a new type of legalism which stressed the centrality of welfare for children and which materially improved the machinery for guardianship and custody decisions in situations that are patently distressing for children (Johnston, 1984). This pattern called for yet a different type of advocacy by lawyers. Their participation in advocacy for children forms a part of the next section.

THE NEW ADVOCACY

Expressions of concern for the position of children have a long history and show their underpinning values in the forms which are the central themes of this inquiry. One example, the humanitarian movements of the child-saving type that emerged during the mid-to-late-nineteenth century, brought to public consciousness the value of children and their powerlessness to influence and change the social conditions which led to their deprivation and exploitation (Bridgeland, 1971: 53-65; Platt, 1969: 3-14). The common theme of these movements was that children needed to be protected from adults and rescued from exploitative situations; it was a matter of adults acting on behalf of children to amelioriate the conditions under which children should be allowed to thrive. It has been shown in earlier chapters how these social movements were about improving the life chances of children as dependents of adults, and of parents in particular. Fundamental to these views was the belief that it was adults who owed children a fair deal as dependents, as incomplete adults, without the clout to influence social conditions for their own benefit. The theme was "what shall we do for the children?" In New Zealand in the early 1970s the theme began to change to "what can the system do for children themselves?" New institutions, new strategies, and belief in a new power, allowed advocates for children to use civil, political and social structures in a fashion hitherto unavailable.

This shift in emphasis was more than the demand for recognition of rights that characterised the protests and dissent of the 1960s and 1970s; that period created a climate in which the dysfunctional aspects of policies for children could be re-examined from the consumers' viewpoint. The origins of this new advocacy for children lay in a questioning of the contradictory role of the state—and other child-saving agencies—as both rescuer and oppressor. In part, this was a recognition that the interventions ostensibly made on behalf of children can in time become problems in themselves. For example, the practice of locking up in solitary confinement acting-out young people to protect them and others from their self-destructive behaviour had become such a routine occurrence in Social Welfare Institutions that this gross infringement of

their civil rights was difficult to justify (HRC, 1983). A further feature was the generalisation from a few seminal issues concerning the rights of a few children to an examination of the rights of all children. What began in some instances as individual cases of injustice were soon seen to be important precedents for policy decisions affecting many children. Those leading the advocacy vanguard saw how these class actions on behalf of children required organized effort to ensure effective measures for invigilating children's rights. The culmination of that thrust was the founding of the New Zealand Committee for Children. By that body and others, public exposure and debate was adopted as a tactic in New Zealand just as it had in the USA

> This new approach to action on behalf of children evolved in the late 1960s as human service practitioners and organizations absorbed the experiences of the civil rights and antipoverty programs, noted the intense suffering and protests of organized welfare and Head Start mothers, faced the serious unmet needs of children, and considered the traditional action strategies. Once the connection had been made, the rationale seemed obvious: children—an inarticulate and powerless group—required advocates from among parents, substitute parents, community leaders, and professionals. Perhaps power could come from communities that were concerned about their young. Would anything less give children a fair share of the national budget? Would agencies and programs improve service delivery and reform the content of what they offered without systematic monitoring and pressure? And because children were not powerful, organized, or watchful, could power and vigilance perhaps be provided through organization, funding, and staffing, i.e., through bureaucratization? (Kahn et al., 1973: 32)

Throughout the period under review, 1969 to 1982, these changes were manifested through slow but gradual shifts of orientation in institutionalised practices such as legal representation and the child welfare system, through the creation of new agencies for whom child advocacy was part of a wider mission, and through the espousing of the children's cause by established rescue agencies. Arranged roughly in chronological order, these topics are discussed: the discovery of child advocacy by lawyers and civil rights groups; the first report on a Bill of Rights for Children; the response of the Human Rights Commission to submissions about children by the Auckland Committee on

Racism and Discrimination (Acord); the Ombudsman as an avenue for the redress of grievances; adoption information advocacy; the campaigns of the Society for the Protection of the Unborn Child; the guardianship campaign of the Salvation Army; the events and influence of the International Year of the Child,1979; and the way in which these practices together formed a new advocacy movement with a discernible body of literature.

Advocacy and the Legal System

To ordinary adults and children, state intervention is represented through the practices of its front-line agents, mainly social workers, but also including teachers, probation officers, psychologists, doctors, residential social workers and therapists of assorted kinds. These are the ones who make the initial contacts and who provide the "treatments" and on-going care. Behind these people stands the authority of the state in the shape of the courts, and much of their work is derived from decisions of those courts. Through appeal and review procedures, those practices are also subject to the continuing scrutiny of the law. For equity before the law, it is necesary for children to have access to it, and competent and committed representation. This section looks at a period of considerable activity and improvement in both those conditions.

Lawyers and children. One of the first changes of this period which became apparent to students of child welfare was a more vigorous legal advocacy. With hindsight, this changed practice was undoubtedly an extension of the power which lawyers had realised in their growing advocacy of women, minority groups and disadvantaged clients. During the 1960s, in my work as a trainee social worker on placement as Children's Court Registrar, and later as a CWO, it was only too clear that representation of juveniles in court proceedings was considered unrewarding and routine by the legal profession. This applied not only to children charged with offences but also to adoption, guardianship and custody applications, and was reflected in the low rate of appearances of counsel for children or their families in those jurisdictions. When lawyers did appear in the Children's Court, it was clear that they regarded the parents who

had retained them—and paid their fees—as the primary clients.

The juvenile justice system did little to encourage an adversarial stance by lawyers because the problem was not justice for children, but the disposal of awkward children, often rejected by despairing parents. Except for capital offences, children had no right to a trial by jury, and until 1963, there was no right of appeal to the Supreme Court against Children's Court decisions. Once children were arraigned on a criminal offence, the question was whether parents were prepared to accept continuing responsibility for their future behaviour. In the many cases where parents had no solution to offer, it was expected by parents and lawyers alike that the state machine would take over.

During the 1970s, lawyers also appeared more frequently in civil matters for children, notably in contentious adoption, guardianship and custody matters. These were essentially of three types: those between parents unable to agree on guardianship, custody or access issues; those concerning adults who wanted access to information under the adoption laws about their origins; and those involving children in the care of the state whose adoption, guardianship or custody was sought on a permanent basis by their foster parents. Each is included in the relevant sub-sections below. Lawyers also formed the core of the Legal Sub-Committee of the Steering Committee on a Bill of Rights for Children which reported to the Christchurch City Council in 1976.

The point of describing these developments is to show that during the 1970s legal specialisms in the areas of family and child welfare advocacy flourished and matured. With no cynicism intended, it would be fair to say that lawyers in private practice discovered that there was money and prestige to be gained from advocacy for children. In turn, children were the beneficiaries. Lawyers took on greater numbers of cases partly because more families were having their disputes heard by the courts. Fired by the rediscovery of the *paramountcy rule*, the role and function of the expert witness expanded; in the New Zealand setting, these were pædiatricians, psychiatrists, psychologists, social workers and family counsellors, who brought the theories, language and

experience of the helping professions into the proceedings (O'Reilly, 1980: 1-4). Once begun, that momentum gathered pace through the increase in reported case law.

> The reporting of these decisions has been an outstanding development. There had been a paucity of decisions until 1978 and in the few notes or reports available up to that time emphasis appeared to be on the more technical legal matters. No judge had come to grips with a consideration of welfare in practical or real terms (O'Reilly, 1980: 3).

By 1979, it was also commonplace for magistrates and judges to make an appointment of *counsel for the child*, in disputed guardianship and custody matters, and legal aid in other less common civil matters, such as permission to marry (Department of Justice, 1981: 14). At Christchurch courts, counsel were drawn by the Registrar from a panel of lawyers thought to be competent in the human relations aspects (McDonald, 1979c). Training for these specialists was also first introduced at the University of Canterbury, Christchurch, in ad hoc courses mounted by interested lawyers, University Extension and the academic departments of Law and Social Work. This community of interest was a precursor to the regional Family Courts Associations, which from 1982 assumed responsibility for the promotion of practitioner continuing education. And, from that year, the inauguration of the Family Courts as a new and specialised jurisdiction legitimated the expert witness, and the roles of counsellors and social workers, in deliberations on the welfare of children.

Access to the law. Advances in the child-centredness of legislation and the application of due process to juvenile offending are somewhat hollow unless children understand their rights and are given assistance to exercise them. Meaningful access to the law for children requires systems for identifying those who need advice, conveying information in an understandable form and ensuring representation is available. New Zealand has no system of *public defender*, but regional Law Societies have operated *duty solicitor* schemes—as agents of the Department of Justice—to ensure that offenders are aware of their right to representation and possibly to legal aid (Crotty, 1977).

Voluntary agencies have in some instances employed so-called *detached youth workers* who, in addition to street work, attend Children and Young Persons Court premises to act as an advisor to defendants. Neighbourhood Law Offices have also offered services to children and young persons wanting legal advice (Department of Justice, 1981: 89-104; Ludbrook *et al.*, 1975).

Only in a few limited areas has the extent to which children—or their parents—make use of these access and information services, and the extent of legal aid or counsel for the child, been investigated (Johnston, 1981; McDonald, 1979c). The best information available on this issue in relation to court hearings emerged from a Department of Justice research project and, although it did not deal with children and young persons specifically, some inferences can be drawn from it. While family matters make up 95% of all applications for legal aid, Children and Young Persons Court hearings account for only 0.7% (Department of Justice, 1981). Indications that children may be missing out on their right to representation need to be investigated.

Children and information on civil rights. Ephemeral documents issued by the "resistance" movements of the period to inform youth of its rights when questioned or arrested by the police, and *The little red schoolbook* (Hansen and Jensen, 1972), were followed by the *New Zealand Handbook of Civil Liberties* in 1973, the first publication to spell out the civil rights of children. A revised and much expanded edition appeared seven years later, in which a full chapter of some twenty pages was devoted to the civil rights of children (McBride, 1980). It began with an opinion on the degree to which New Zealand measured up to Principle 2 of the United Nations Declaration on the Rights of the Child—that laws shall hold to the best interests of the child as the paramount consideration. McBride's view was that laws affecting children appeared to conform reasonably well to the ideal of the Declaration, but in practice there was considerable room for improvement. He also made the observation that most restrictions on children's and young persons' behaviour, such as drinking, smoking and sexual behaviour, apply to the home and at

school (McBride, 1980: 439). The list of proscriptions in school activities which were likely to get children into trouble, infringe their rights or lead to grievances, was indeed lengthy. These cover attendance, dress and deportment, suspension and expulsion, damage to school property, confiscation of property, corporal punishment, interviews by the police, religious instruction, and sex instruction. Similarly, the *Children and Young Persons Act, 1974,* and children's rights in relation to it, were spelt out in detail (McBride, 1980: 440-54).

McBride also asked the question of what the rights of children should be? He found the Canadian approach had much to recommend it (Royal Commission on Family and Children' Law, 1975), and he endorsed the action of the Royal Commission on the Courts (1977) in considering the basic rights of children in marital breakdown worthy of prominence. Apart from making a contribution to the exercise of civil rights by and on behalf of children, McBride's review emphasised the high degree of legislative intervention in the lives of New Zealand children.

Advocacy for a Bill of Children's Rights

We may consider calls for improvements in the lot of children a form of advocacy for their rights, and individuals and corporate bodies have stood up for children since Pakeha settlement commenced. From Bromfield's plea for the exclusion of juvenile workers from the flax mills (AJHR, 1870, D.14: 46) to Doris Mirams' *Listener* articles (Mirams, 1949), officialdom and the public have been lobbied on behalf of children. But the idea of a Bill of Rights for Children was entirely novel to the New Zealand scene when first mooted in 1976. The *Sutherland Report* , described here, was followed by a type of charter proposed by the Royal Commission on the Courts (1977), and by 1979 the topic was a necessary part of the debates of IYC.

The Sutherland Report. A movement for children's rights ignited by the announcement of 1979 as the International Year of the Child, brought together a group of like-minded people in Christchurch in 1976. A committed advocate

for civil rights in general and children's rights in particular, Cr Nancy Sutherland, persuaded the Christchurch City Council to set up a Steering Committee on a Bill of Rights for Children. It worked for a year on preparing the background for that task, and brought down recommendations concerning the treatment and care of children based on the observations and research of its sub-committees.

> The Sub-committees prepared discussion papers based on the ten articles of the U. N. Declaration of the Rights of the Child in relation to the status and rights of the child in New Zealand. . . . Our findings indicate that, in this country, the Declaration is more honoured in the breach than in the observance of the principles set forth. As in many other countries, there are inconsistencies in the law—and injustices as the law affects children. . . . Children's rights are <u>not</u> paramount, <u>nor</u> are they always protected. This is obvious in our juvenile courts; in adoption and fostering procedures, as well as in daycare and in inheritance matters. The rights of handicapped children, children of divorced or separated parents, neglected children and those under the authority of schools, hospitals and other institutions are abrogated or denied in varying degrees. . . . New Zealand is already lagging behind many countries in embarking on a national programme to ensure that the rights and interests of children are upheld (Sutherland, 1976: 9. Emphasis in original).

The Steering Committee made a prime recommendation to the Christchurch City Council that it approve in principle the concepts of a Children's Bill of Rights, followed by seven consequential items. It asked that the Municipal Association, of which Council was a member, endorse the prime proposal; that government be approached to set up a investigatory committee on children's rights, prepare a draft bill, organize an IYC conference, establish a Ministry for Children, and establish a child study centre; that a children's rights committee be set up by Council, to work towards activities in 1979; that a further Royal Commission be established to consider the economic circumstances of families; that copies of the report be sent to selected organizations, Ministers of the Crown and Parliamentarians. The full report was accepted initially by the Social Services Committee and the Policy and Finance Committee, and adopted by the full Christchurch City Council, in December, 1976 (Report of the Steering Committee on a Bill of Rights for Children, 1976:

11-2). Few of its recommendations were actioned by the recipients, and its work was soon overtaken by the Theme Committees of IYC.

The "Sutherland Report" had the distinction, however, of being the first comprehensive examination of children's rights to be published in New Zealand. It also demonstrated what could be achieved when people were mobilised around a common concern under zealous leadership. Despite the barren outcome, the process undoubtedly sensitised officials and workers with children to the idea of children's rights, to areas which could be immediately improved and to goals which could be worked towards.

Advocacy for Children in Care

The strategy of the protests of Doris Meares Mirams in 1948 against institutional care in general, and certain cruel and demeaning practices in particular (Chapter VII), can be contrasted with the advocacy of the Auckland Committee on Racism and Discrimination (Acord) of three decades later. Where Mirams used the respectable medium of *The Listener* and rational but emotive content to influence public opinion, Acord uncompromisingly told its stories wherever they would be heard, to the news media, to Parliamentary select committees, and in the form of complaints to the authorities set up to hear such grievances, notably the Ombudsman and, after 1977, the Human Rights Commission. Acord represented a new form of civil rights *ginger group*; despite its Pakeha, professional leadership, its campaigns were much more than intellectual jousting. It combined the commitment of its ideological forerunners, such as the Howard League for Penal Reform, with the passion and urgency for justice voiced by the disadvantaged people for whom it spoke. During the 1970s, it put most of its energies into drawing attention to practices for children and young people in care, particularly Maori youth, and to what it claimed were ". . . the callous and racist policies of welfare and judicial authorities in New Zealand" (Anich, 1980: 37). Moreover:

The Acord position is that there are no safeguards provided and no

> controls placed on state intervention and what the state does after intervention. Acord puts the question of state intervention to one side and takes the situation as it exists. To look at the extreme cases shows in sharp relief what can be done. Acord's main concern is with the lack of checks on the Department of Social Welfare (Anich, 1980: 65-66).

Acord was in the public limelight when the *Children and Young Persons Bill* was before the Parliamentary select committee considering it in 1974. Acord's criticism of the juvenile justice system was that the Police, the Department of Social Welfare and the Department of Justice were ". . . *creating criminals* by their treatment of so-called child offenders. Official sensitivity to this criticism was so great that the Chairman of the Select Committee, Dr Gerard Wall, invoked Standing Orders in an effort to have Acord delete this passage from their submissions" (Anich, 1980: 37. Emphasis in original). A full treatment of the history and endeavours of Acord is not possible here, but a few of the episodes illustrative of of its tactics and its influence are examined.

Children's consent to treatment. Earlier incidents arising from the refusal of parents to consent to recommended medical treatment of children in life-threatening situations resulted in changes to the law which allowed at-risk children to be made state wards, i.e., committed to the care of the Director-General of Social Welfare. The common precipitating situation was the religious conviction of Seventh Day Adventist adherents that blood transfusions for themselves or their children were transgressions of Divine Law. The *Guardianship Act, 1968*, specifically provided in s.25 that any child of sixteen years or over could consent to surgery and blood transfusions as if they were of full age, and that for younger children consent may be given by the parents, persons acting in their place, guardians, a Magistrate or the Director-General of Social Welfare. Doctors could then apply directly to the Magistrates Court when they believed parental refusal to consent was against the welfare of the child (doctors have subsequently been indemnified against civil or criminal action when acting in good faith). In the case of state wards, once guardianship was legally transferred to the Director-General, he and his authorised officers could give consent for the treatment recommended by medical specialists.

However, departmental practice was to pass that task over to the parent or residual guardian wherever possible, and where there was no resistence to the medical recommendation. The new policy of the *Guardianship Act* was to give paramountcy to the welfare of the child and two principles were enunciated in this policy. First, children under sixteen years were neither competent to consent to treatment nor to refuse it. Second, for those children under the guardianship of the state, parental and children's rights were abrogated.

One of the *extreme cases* which Acord chose to pursue in its advocacy for children in the care of the Director-General of Social Welfare involved consent to electro-convulsive therapy given to a boy temporarily in care. The case attracted news media attention and Parliamentary questions, and subsequently led to the appointment early in 1977 of a Commission of Inquiry , comprising a sole commissioner, W.J. Mitchell, Stipendary Magistrate, of Auckland. It submitted to Parliament in March, 1977, its *Report of the Commission of Inquiry into the case of a Niuean boy* (AJHR, 1977: E.25). In addition to Acord as the principal complainant, a number of other interested parties joined the inquiry: the New Zealand Psychological Society, which had expressed professional interest in electro-convulsive therapy (ECT); the Polynesian Panther Party and *Whakahou*, both given standing as watchdogs of the interests of Pacific Islands' peoples; The Citizens' Commission on Human Rights, a group sponsored by the Church of Scientology, and which condemns ECT and its variations as torture; the New Zealand College of Psychiatrists, because the central complaint was against one of its members; the Chief Ombudsman, who was concurrently investigating a similar complaint about the same hospital unit.

A brief background to the case follows. The boy in question was born in 1962 in Niue Island. Almost from birth, he suffered from fits and by local custom for atypical children was "spoiled", that is, not subjected to the usual restraints of socialization. He came with his family to Auckland at the age of five and over the next five years was seen by doctors and pyschologists for his aggressive and troublesome behaviour. For nine months up to March, 1972, he was an inpatient at a psychopædic hospital, diagnosed as epileptic and mildly mentally

retarded. In 1973, he came to Police notice for theft and the following year offended again and was placed by the Children's Court under Social Welfare supervision. His behaviour deteriorated to the point where his relatives were frightened to have him at home, schools were unwilling to take him and his doctors were considering psychiatric care. He was admitted to a Social Welfare short-stay centre, and while officially in the custody of the Director-General, on remand from the Children's Court, his doctor arranged for him to be admitted informally—not committed under the *Mental Health Act*—to the Adolescent Unit, Lake Alice Hospital, Marton. This was the only hospital which would admit him, but it was a considerable distance from his home. On 15 December, 1976, the newspaper the *New Zealand Herald* published the following report:

> The Auckland Committee on Racism and Discrimination has protested to the Minister of Social Welfare, Mr Walker, over the case of a 13-year-old Niuean boy who was sent to Lake Alice Psychiatric Hospital, near Palmerston North, and subjected to courses of electric shock treatment without his parents' knowledge. The boy, who is an epileptic, had been placed under the guardianship of the Department of Social Welfare after three court appearances for shop-lifting, according to official documents and other information supplied to the committee by the boys' parents. He was also given forced injections of tranquillisers.
>
> A spokesman said yesterday that the committee believed the boy's case raised two important questions. 'We want to know whether the state, when it has taken legal guardianship of a child, has the right to do what it pleases to the body and mind of that child without reference to the child's own natural parents. . . . The second question is whether the state has the right to administer electro-convulsive therapy to a child without the consent of the child or his parents" (AJHR, 1977, E.25: 34).

The written report submitted by Acord at the opening of the Commission's hearing specified twenty separate allegations of negligence by the Department of Social Welfare towards the boy and his family. These cover various actions, or failures to act, ranging from problems of communication, lack of support, high-handed and unprofessional casework practice, and exposing the boy to inhumane and unnecessary treatment. Amongst other allegations of the regime at Lake Alice Hospital Adolescent Unit (run by the Palmerston North Hospital Board), was the claim that the threat of ECT was used as a coercive

measure and at times actually administered as a punishment for unruly behaviour, without the customary muscle relaxant. Clearly, Acord viewed the matter very much as a test case to be fought with all the ammunition it could muster. Its ultimate aim was to draw attention to the guardianship practices of the Auckland district office of the Department of Social Welfare, and to force radical changes. Acord, in its first letter on the matter to the Minister of Social Welfare, wrote: "We demand that you immediately suspend all future guardianship orders in Auckland until there has been a full inquiry into this case and into the whole operation of the Auckland office" (AJHR, 1977, E.25: 34).

The Commission of Inquiry condemned Acord for the over-dramatisation of the publicity which led up to the inquiry and of the wording of its submission. It thought that Acord had made light of the troubles which led to the boy being admitted to the psychiatric hospital, which was the only such place available to him. It deplored the impression given that the state had taken the boy on its own initiative when the evidence pointed to the inability of the family to cope with him. If any one was to carry the responsibility, it was the doctor who worked with the family and arranged the boy's admission. Acord's references to "Lake Alice Hospital for the criminally insane" were thought to be unfortunate, because the adolescent unit had nothing whatsoever to do with the secure unit for the "criminally insane" in the same grounds. Finally, in regard to Acord's demand for the suspension of all guardianship orders in Auckland, the Commission gave its view that ". . . this was wild talk and there was nothing in the evidence to justify that demand" (AJHR, 1977, E.25: 34). In annotating each allegation point by point, the report of the Commission of Inquiry exonerated the Department of Social Welfare from any major culpability. Matters of interpretation of the law and the powers of the Children and Young Persons' Court to obtain psychiatric reports before disposing of a complaint were referred for further consideration (AJHR, 1977, E.25: 35).

The style of complaint leading to the Commission of Inquiry was child advocacy of a type never before encountered by the authorities. The episode demonstrated the fierce and unremitting stance which Acord assumed in its

confrontation of the state. It began from the assumption that all of the alleged victim's career was attributable to state negligence, pursued that strategy to the end, and was not prepared to concede ground on any point.

In the event, it might be true to say that while Acord lost the battle it won the war— or certainly considerable ground. A concurrent complaint to the Chief Ombudsman in the matter of another young resident of Lake Alice Hospital adolescent unit was received with much more sympathy. The facts were similar to those surrounding the case of the Niuean boy (AJHR, 1977, E.25), and the complaint, in essence, ". . . charged the State agencies involved in the boy's treatment, the Departments of Health and Social Welfare, with maladministration and misconduct" (Ombudsman, 1977). The Chief Ombudsman found that both departments were open to criticism in terms of s.22(1) of the *Ombudsmen Act, 1975*, and that the boy patient had suffered a grave injustice. As well as a recommendation that Social Welfare should always use formal committal proceedings where admission to mental hospital was indicated, the Chief Ombudsman put forward a code for obtaining consent to treatment by adults, children and young persons. This suggested that:

> The Department of Health adopt and apply in psychiatric hospitals within its jurisdiction the following standard relating to consent to psychiatric treatment:
>
> Treatment (other than nursing care) should not be imposed on any patient without his consent if he is able to appreciate or understand what is involved. Three exceptions should be allowed - treatment may be given without consent:
>
> (i) Where it is not hazardous or irreversible and is the minimum necessary to prevent the patient behaving violently or being a danger to himself or others;
>
> (ii) Where it is necessary to save his life; or
>
> (iii) Where (not being irreversible) it is necessary to prevent him from deteriorating.
>
> Where, by reason of his age or disability, the patient is unable to understand or appreciate what is involved, despite the help of an explanation in simple terms, treatment may be given, but where

irreversible treatment is involved:

(i) Obtain a second psychiatric opinion independent of the treating hospital (unless delay would cause or exacerbate a danger to life);

(ii) The patient's nearest relative or legal guardian should be consulted if this consultation is possible within a reasonable time (Ombudsman, 1977: 11).

The Chief Ombudsman felt that secrecy provisions of the Act precluded him from revealing more about this case than the summary provided (Ombudsman, 1987). However, from my personal acquaintance with the people involved, I know that the final result of this investigation at Lake Alice Hospital was the closure of the adolescent unit and the resignation of the psychiatrist-in-charge. That victory strengthened the resolve of Acord to continue their gadfly operation against the Department of Social Welfare and its methods of dealing with young people.

Residential care and the violation of rights. Over the years, the DSW Owairaka Boys' Home, Mt Albert, Auckland, had changed in nature from being in 1959 a medium-stay institution not unlike ". . . a type of boys' club with accommodation attached" (HRC,1983: 56) to becoming in 1978 a short-term remand centre run on militaristic and authoritarian lines. Dissatified with the response of the Department of Social Welfare to its claims about the dehumanising treatment accorded all residents and to those placed in the *secure block* —a jail-like unit within the main institution—Acord took the unprecedented step in June, 1978, of holding its own public inquiry into conditions in that institution and others run by the Department in the Auckland area. It was joined in this by Nga Tamatoa, a Maori youth organization, and by Arohanui Incorporated, a voluntary body for the shelter and rehabilitation of homeless youth. The inquiry was open to the public and included testimony by former staff members and residents. Evidence given was widely reported in the news media. The following February, Acord made a formal complaint to the Human Rights Commission about the way venereal disease testing was carried out on girls resident in Social Welfare homes, and forwarded a copy of its

public inquiry findings. After an exchange of correspondence on the matter, Acord then sent a formal complaint to the Commission, alleging that

> . . . "the treatment of children by the Department of Social Welfare in the Bollard Girls' Home, the Owairaka Boys' Home and other Homes violates the United Nations Covenant on Civil and Political Rights which the New Zealand Government ratified on 28 December, 1978.". . . Having decided that the representations which form the basis of this report did constitute a "matter affecting human rights" within various Articles of the International Covenant on Civil and Political Rights the Commission then had to decide on its future course of action. *This involved many considerations novel to the Commission as these representations were the first received by it involving allegations of fact* and therefore requiring a consideration of the substantive basis of those allegations (HRC, 1983: 1-3. Emphasis added).

Hence, it was a matter concerning the rights of children which became the first major and most extensive investigation of breaches of internationally-agreed human rights to be investigated by the Human Rights Commission since its establishment in 1978. The State of New Zealand had already covered itself against the possibility of breaches of the International Convenant on Civil and Political Rights by refusing to ratify Article 10, paragraphs (2)(b) and (3) which required the segregation of juvenile accused on remand and the separation of juveniles from facilities for adult prisoners. The explanation given was insufficient accommodation to cover every contingency (Downey, 1983: 103, 167, 178-88).

The Human Rights Commission investigation began formally in April, 1979, and it submitted its final report to the Prime Minister in August, 1982. Shortage of staff, the death of a Commissioner and delay in his replacement, were cited as factors for the length of time in bringing the matter to a conclusion. In its summing up, the Commission was of the opinion that many of the practices of the Social Welfare homes were of ". . . such a nature that they raise serious and substantial questions regarding this country's 'better compliance' with the standards set out in Articles of United Nations Covenants on Human Rights, as ratified" (HRC, 1983: 120). The following provisions of the International Covenant on Civil and Political Rights especially concerned the Commission as

potentially breached by the practices revealed: Article 7, which refers to cruel, inhuman or degrading treatment or punishment; Article 9, which refers to liberty and the security of the person; Article 10, on humane treatment and respect for the inherent dignity of the human person; Article 27, on the rights of minorities to have their culture respected. Additionally, the Commission thought that two Articles of the International Covenant on Economic, social and Cultural Rights were breached by conditions in the homes: Article 12, which refers to the right of everyone to the highest attainable standard of physical and mental health; Article 13, on the right to education (HRC, 1983: 121-2). The Commission acknowledged that the Department was in most cases dealing with intractable cases in environments of tension and turbulence. Moreover, it acknowledged that the Department moved immediately to eradicate the practices and procedures which were the basis of the Acord allegations, and had during the course of the investigation, embarked on a programme of innovative change (HRC, 1983: 123-4).

Adoption Information Advocacy

Towards the end of this period under review, there were approximately 100,000 persons in New Zealand who had been the subject of an adoption order. When put together with their parents and adoptive parents, this meant that approximately 10% of the population were members of the *adoption triangle* (Griffith, 1981: 1). It is small wonder that the unsatisfactory state of affairs pertaining to information about adoptees' origins, as described in the last chapter, began to be challenged in systematic and collective fashion by interested parties from the mid-1970s. That movement found a Parliamentary champion in the Hon. Jonathon Hunt, who in 1978, 1979 and 1980 unsuccessfully introduced to the House a series of private member's Bills designed to open up official records for the parties to adoption.

Advocacy movements. Four streams of adoption interest groups emerged in New Zealand during the 1970s. The first stream was the New Zealand version of the British organization *Jigsaw*, a co-operative agency dedicated to

changing adoption law and practices and to helping adoptees search their origins. Later, it opted to allow membership by adoptive parents, a move which one disenchanted foundation member saw as a disabling compromise because it ". . . would have the effect of toning down the demands for an adoption law change which would make it possible for adopted children and their natural parents to meet again—*when they need to.* No matter how sympathetic some adoptive parents are to their children's needs, they always feel threatened by the natural mother to some extent" (Shawyer, 1979: xii). *Jigsaw* remained primarily an Auckland-based organization. The second stream had aims similar to *Jigsaw* but were groups open to membership by and advocacy on behalf of any parties to adoption. These regional organizations commonly went under the title *Adoption Support Group*, and were open to using professional leadership, notably that of the Rev. Keith Griffith, who was a prime mover in the Wellington group, and consulted frequently with others. Griffith was also a key member of the third stream, a loose corresponding collectivity of people testing the legal system to see how far s.23 of the *Adoption Act, 1955*, could be bent to their interests of searching their origins. By the end of 1978, individuals were having some success with applications to Magistrates' Courts (Griffith, 1981: 41). The fourth stream were the adoption placement agencies and parent education groups, now faced with the "baby famine", and trying to meet applicants' expectations for better information on how to maximise their chances in a shrinking market. Modern practices, especially the idea of *open adoption,* and non-traditional placements of hitherto less desirable adoptees, such as handicapped, older or mixed-race children, were some of the influences which this fourth stream brought to the attention of applicants.

Adoption advocacy tactics. In the absence of an automatic right by adult adoptees to obtain information about their origins, *Jigsaw*, adoption support groups and sympathetic lawyers developed a number of methods of helping people achieve the same ends. The most common method was that known as *adoptee self-searching* (Griffith, 1981: C.1). In brief, this method involved the adoptee working outside of the official system and probing three main sources for information: adoptive parents, relatives of adoptive parents and old

documents. This method was entirely legal and often fruitful. As the support groups flourished, so too did their collective wisdom and systematised knowledge, intersecting with the aims of the numerous New Zealand genealogy societies and providing a useful cross-fertilization (Triseliotis, 1977).

The second tactic used in New Zealand, usually when the self-search was barren, was the *Court adoption record method.* This requires that a case be made under s. 23(c) of the *Adoption Act, 1955,* that the records be made available on a special ground. So far as can ascertained, it was only from 1976 that any applications were made under this section, and only from 1978 that any were successful (Griffith, 1981: C.2). By 1981, Griffith stated,

> Because there have been some recently successful cases does not necessarily mean that the Courts are taking a more liberal interpretation. Each case is taken on its merits and there is no clear case law established. By the very wording of the Act cases must be restricted to those of proven 'special ground' circumstances and therfore there is no hope of this section opening the way for general access by adoptees (Griffith, 1981: C.2).

Case by case, however, evidence of the determination of adult adoptees, and the generally satisfactory outcomes, whether by self-searching or by representation by competent counsel, was building up a stronger argument for changes to the legislation.

Advocacy for the Unborn

When inquiring into the status of the unborn child in the introduction to this chapter, it was noted that the Society for the Protection of the Unborn Child (SPUC) was a principal party to the hearings of the Royal Commission on Contraception, Sterilisation and Abortion. Indeed, it was one of only three groups to be represented by counsel. Of those, the Royal Commission commented on its sittings that, "The debate before us for major law reform in New Zealand has largely been carried by the Abortion Law Reform Association and that against such reform by the Society for the Protection of the Unborn

Child and the Guild of St. Luke, Ss. Cosmas and Damien" (R.C.C.S.A., 1977: 45). SPUC was responsible for getting numerous supporters and members to give personal testimony to the Royal Commission. The report does not convey the intensity of the debate and the firmly drawn lines between the pro-abortion and anti-abortion factions. Nor does it convey the remorseless cross- questioning characteristic of SPUC counsel.

From my attendance at those public hearings, and my collegial relationship with one of the Royal Commissioners, I had been impressed by the style of advocacy employed by SPUC. That led me to say in an essay that ". . . its significance as a child advocacy programme must be reinforced. Of special interest are its features of substantial and fervent individual commitment, the gathering of sizeable resources and the tactical decision to pursue every means towards the ultimate goal" (McDonald, 1978: 52). That portrayal has remained true when one takes into account the SPUC presence at the H.R.C.-IYC conference at Christchurch (Bartlett, 1980; Dalgety, 1980; Pryor, 1980), and their 1980 representation to the Human Rights Commission (HRC, 1980). In every respect, SPUC was a model of a committed and efficient advocacy movement and, divergent as their aims and objectives might be, comparable with the skills and strength of Acord.

Advocacy for Guardianship

Under British common law, adult responsibility for children was legally limited to providing for their material needs and safety. Guardianship was a practice ". . . deeply rooted in medieval concepts of land holding" (Cretney, 1976: 320) and of interest only to the wealthy. Poor children were provided for in the array of welfare legislation dating from Tudor times, along with other dependent persons, so that relatives could be held accountable for their maintenance should there be a chance that they would become a charge on the community or the state. In those circumstances, it was an issue of some importance that liability should be attributed to the father or guardian, and even more so where paternity was in doubt (yet again, I draw attention to the

seminal importance of Grey's 1846 Ordinance for *The relief of destitute persons and illegitimate children*). Guardianship was transferable, and arrangements for apprenticing children, placing them at service, in institutions and schools, invoked the *in loco parentis* rule (Bruce, 1961: 39). Children of property were likewise safeguarded from being alienated from their inheritance by the operation of Chancery wardship (Pinchbeck and Hewitt, 1973: 363).

New Zealand Pakeha law followed similar arrangements, with the result that it has never been a requirement for any child to have a nominated guardian in the absence of the natural parents. Provided no laws are being infringed, the state has no interest in the custody or guardianship arrangements of children not living with their parents. The matter was brought to public attention when Mrs Captain Joan Hutson, Salvation Army, with the support of the Salvation Army's Research and Advisory Unit, made an unsuccessful submission to the Minister of Social Welfare in August, 1982, on the proposition that a nominated adult, personal guardian was an imperative for every New Zealand child (Hutson, 1983).

The Salvation Army guardianship campaign. The Hutson submission, which was subsequently adopted by the Salvation Army as the basis for a public campaign, rested upon the central claim that a personal guardian was the birthright of every child. Acknowledging that most children live through their dependency under the care of at least one parent, Hutson identified four situations where she considered children to be potentially at risk:

1. The situation where a child is born to an girl under sixteen years of age. Hutson described this as "children bringing up children", and she queried whether it was in the best interests of the infant to have as its sole guardian a person who is legally not an adult. Given that the girl is unlikely to have the usual maturity, mothering skills, or income, and is prohibited from getting married, adequate care for her infant is problematic. Hutson saw the problem as a legal system which assumed that no babies will be born to anyone who is not an adult and, in that eventuality, they will be adopted. In support of her

contention, Hutson pointed out that 137 mothers under the age of sixteen years were in receipt of the Domestic Purposes Benefit in 1981, probably an under-estimation of the total number of under-age girls caring for ex-nuptial babies. As a further measure of incidence, she cited figures supplied by the Government Statistician to the effect that in the year ended December, 1980, there were 755 babies born to mothers under the age of seventeen, and 949 born to seventeen year-old mothers (Hutson, 1983: 2).

2. The disadvantages suffered by children who are state wards or Wards of Court and have no personal guardian. The picture painted by Hutson is that of fragmentation of the wards' lives between those who care for them day by day and those in authority who make the major decisions affecting their placement and future. The child care workers change from time to time with the effect that they may not have met their wards when they are called upon to make decisions about them. A system of this type leads to impersonal service and consequently to confusion and possibly rebellion by the children. Nor can the system of residual guardianship so long practised by the Department of Social Welfare be relied on to provide children with contact and support from their natural parents. "Such parents often find it very difficult to express their views to authority figures such as social workers and may eventually give up the struggle to remain significant to their children" (Hutson, 1983: 4). The solution offered by Hutson was the appointment of personal guardians for all wards. These would be people involved in the important planning decisions, and seeing the children with a view to building a relationship that would be both personal and permanent.

3. The situation where parents have abdicated responsibility for their children, either before or after the children have been taken into care. This raised the issue of how long natural ties between children and their parents can be considered to be the sole guardianship expectations. The "ghost parent", with a legal right to re-enter the child's life at any time, is both a real and imagined spectre who forestalls the development of a parenting relationship with foster parents or other parent substitutes. From time to time, it has been

mooted that residual guardianship should be time limited, and should lapse after a finite period without active interest by the parents. Hutson suggested that in all cases of absentee parents, an additional guardian be appointed.

4. Orphans and children in one-parent families were considered a most vunerable category. Hutson asked the question of what happened to children when the custodial parent died or was incapacitated. In support of her contention that this placed large numbers of children at risk of no continuing adult support, she pointed out that there were 40,663 solo parents receiving the Domestic Purposes Benefit at 31 March, 1982. "They were caring for 72,201 children. There are an unknown number of solo parents who do not receive this benefit" (Hutson, 1983: 8).

When the Minister of Social Welfare was disinclined to take up the personal guardian cause, the Salvation Army decided as a matter of policy to bring the issue to the attention of New Zealand parents. Under the slogan "Children need more than just a guardian angel", it prepared and paid for television advertisements, and it produced posters, brochures and information packets for widespread distribution. Press statements with illustrative case studies were released, and two articles on the campaign were included in every information packet. Detailed ideas on promoting the scheme were supplied to supporters. All in all, the campaign demonstrated the essential characteristics of the new styles of advocacy.

Residual versus permanent guardianship. Situations similar to those given in the Salvation Army's arguments on guardianship had during the 1970s been taken up with some success by foster parents who had previously found the Director-General of Social Welfare intractable on the issue of overriding parental refusals to consent to adoption. The policy stand taken by the Director-General—and the Superintendents of Child Welfare before 1972—in relation to the long-term guardianship of state wards required that children should be returned to their parents or former guardians whenever wardship ceased. Casework with children and families was directed towards such

reunions, as this extract describes:

> J.1 An order committing a child to the care of the Superintendent makes the Superintendent the legal guardian of the child, 'to the exclusion of all other persons', so that parents lose their legal rights over the child. However, no court order can, of itself, affect emotional and other bonds between the child and his family, and most of our wards return to their families, or at least hope to. Apart from the few instances in which the family is known to have an actively harmful influence on the child, family ties should be encouraged and parents should be consulted (or at least informed) about action concerning their children (CWD, 1971).

The attitude of preserving residual guardship for the absent parent permeated casework to the extent that foster parents were counselled never to expect eventual guardianship. The atypical case was one in which a state ward had been fostered, perhaps since birth, having little or no contact from the biological parents, so that the foster parents had come to regard it as their own child. These being in all respects *de facto* adoptions, there were sometimes requests for the Superintendent to consent to an adoption or guardianship application, and to support an application to the court that parental consent be dispensed with. While these cases were relatively rare, the occasions when the Superintendent consented to that course of action were even rarer. Other examples included those situations where a natural parent's claim for the return of a child led foster parents to question the desirability of that move. The only effective course open to them was to stake their own claim to the child. Starting in the late 1960s, foster parents seeking adoption or guardianship of children with whom they had a close emotional relationship began to take matters into their own hands. Solicitors acting for them pushed aside the inertia of the child welfare system and filed for fresh guardianship orders (O'Reilly, 1987).

The early and successful applications by foster parents led to two insights. First, the custody and guardianship dispute between foster parents and biological parents was really not much different from disputes between mother and father; similar criteria could be applied to arrive at the answer to the question, "which serves the best interests of the child?" Thus, concepts such as

the *child's principal attachment figure* and *psychological parenthood* gained equal currency in disputes between strangers as they did in family ones (Zelas, 1980: 33). Second, it was in the interests of the Child Welfare Division—or DSW from 1972—to stand aside in such applications. Unless they had serious objections to the suitability of the applicants, then it was best that the matter should be decided by the court which had, after all, put the child into care in the first place. Precedents of this type have allowed the New Zealand Foster Care Federation to issue guidelines on the alternatives and actions available to members seeking permanent guardianship of children in care (Roberts, 1981: 17-20). While foster parents and their foster children were the victors, the heroes were the lawyers who prosecuted those applications with all the vigour of the new advocacy.

The International Year of the Child, 1979

The government of New Zealand, in co-operation with the New Zealand branch of UNICEF, sponsored the establishment of the New Zealand National Commission for International Year of the Child (NCIYC) in October, 1977. Eight government departments and fifty-seven non- governmental organizations were parties to the Resolution of Establishment (Lewis and Lockhart, 1980: 8). It adopted the objectives of the IYC Secretariat, which were to raise awareness of children's needs, nationally and internationally, and to promote activities which would benefit children in both the short and long term. The NCIYC chose twelve themes and established national committees to work on them; in turn, corresponding regional committees were set up. During the Year of the Child itself, one month was dedicated to each of these themes in sequence:

The child in play and creativity
The child in care
The child and family/ preparing for parenthood
The child and health
The child - work and vocation
The child and learning

The child and the media
The child in a multi-cultural society
The child at risk
The child in the world
The law and the needs of the child
A child's view

A peak of activity centred round the fund-raising event held in June, 1979, by South Pacific Television. The *IYC Telethon* —a corruption of *television* and *marathon* —was a continuous, twenty-four-hour extravaganza of entertainment and public involvement during which more than two and a half million dollars was pledged for NCIYC purposes. An IYC Telethon Trust was formed comprising the NCIYC head as chairman, and the twelve theme committee chairpersons as board members. "Approximately $2.7 million had been raised, whereas the amount applied for totalled $19.6 million. It was decided by the Trust that rather than give large amounts of money to a few bodies, the money would be spread widely" (Lewis and Lockhart, 1980: 11).

Each of the committees promoted activities congruent with their themes. Each developed statements of principle appropriate to the New Zealand situation and reported these, together with their recommendations, in the IYC Report (Lewis and Lockhart, 1980). Of special interest to this inquiry are the two themes of *The Child at Risk* and *The Law and the Needs of the Child,* whose areas of interest overlapped to some extent. The principal event sponsored by The Law and the Needs of the Child Committee, jointly with the Human Rights Commission, was a three-day conference in November, 1979. Experts were asked to provide position papers for five separate sections of the conference, and papers were invited from persons representing a diverse range of views and opinions about the issues of custody, crime and punishment, the status of children and their care, and advocacy for children through a national body. The proceedings were published (HRC, 1980). Other organizations made contributions to IYC in their own spheres such as, for example, the symposium on *Social Policy and Rights of the Child* mounted by

the Department of University Extension, Otago University, Dunedin, and held as a subsidiary event to the Christchurch conference (Shannon and Webb, 1980).

A feature of both conferences was the lack of unanimity between the viewpoints represented. At Christchurch, divisions were evident between those who thought that proposals to codify the rights of children were misguided (Pryor, 1980), those who thought the courts to be the best arbiter of rights (Gavin, 1980), and those who thought that they could not be properly realised because New Zealand was still an unjust society (McBride, 1980b); between those who thought that parental rights would be overridden by children's rights (Ross, 1980) and those who suggested the emancipation of children by maturity criteria (Christopherson, 1980). "Strong opposition to a commission for children was voiced by a number who described it as a 'parent clobbering machine'" (Lewis and Lockhart, 1980: 89). At Dunedin, where the invited speakers represented what might be called the liberal end of the spectrum of views on children's rights, the debate refined into a single issue: the degree to which the state purports to protect the rights of children while at the same time making them "prisoners of benevolence". The final session,

> The closing debate, after Jordan's provocative summation of the conference, generated some heat. Despite the marked differences in viewpoint, the participants were united in their concern for human needs. Yet the sharp differences show that the path ahead is certainly not without its pitfalls. . . . there has been a resurgence of conservative apologists for human rights who seem to wish to return to the 'devil take the hindmost' philosophy of the nineteenth century and earlier. If we have become 'prisoners of benevolence', as has been claimed, is forgetting the concern with human needs which originally animated the development of our welfare state a solution? Similarly, is it possible to ignore . . . . that the welfare state has manifestly failed to solve problems of poverty and deprivation? (Shannon, 1980)

While the notion of a permanent body to represent the interests of children may have been a foregone conclusion to the events of IYC, the final structure and function of such an organization was clarified by the flux of opinion and debate promoted by and available to NCIYC. At the end of the Year of the Child, NCIYC decided that the most appropriate structure was for a non-

governmental body to be known as the *New Zealand Committee for Children.* The Committee was originally formed by inviting all member organizations of NCIYC to work loosely but formally towards a method of implementation. In the first two years of its operation, it set up procedures for carrying out the the two tasks set for it by NCIYC :

> 1. To co-ordinate and promote the implementation of IYC Statements of Principle and underlying recommendations as approved by the National Commission in February, 1980, [and] 2. To act as an advocate for and in the best interests of the children of New Zealand and the World, in the spirit of IYC (Lewis and Lockhart, 1980).

The New Advocacy Reviewed

It is impossible to account for all the strands of influence which saw new practices in advocacy for children introduced in New Zealand in the time up to 1982. Some of the reasons are, however, evident. Clearly, greater use was being made of the existing provisions for the resolution of grievances, the best example of which is the office of the Ombudsman, first created in 1963. New instruments, particularly the Human Rights Commission and the Race Relations Office, appeared only in the late 1970s, providing an outlet for advocacy issues hitherto denied appropriate recognition. The extraordinary number of commissions and committees of inquiry provided vehicles for opinions to be mobilised and publicised. Into this mix came non-governmental agencies specifically and forcefully committed to the pursuit of children's rights. A modelling and "snowball" effect was apparent as the fortunes of new avenues and new claims were made known, as collectivities of interest shared information about their activities, and as a literature on advocacy for children's rights was compiled. The events of the years from 1976, culminating in International Year of the Child, educated practitioners, academics and lay people alike about the language of children's rights, and promoted thought, debate and action on an unprecedented scale. Comment on the utility of that activity follows next.

CONCLUSION: CHILDREN AS CITIZENS

The argument of this chapter has been that, from beginnings evident in 1969, the social values which informed policy for children showed a demonstrable shift towards considering children on grounds similar to those applied to adults. As well, in addressing that issue, it seems reasonable to appeal to measurements of both quantity and quality. The relationship between the events, influences, and practices through which these changes were expressed is considered next. At that point, it is necessary to go beyond description and to attempt to bring together the main structural and ideological features which contributed to these events and changes. A full summary of the position of children and young persons in New Zealand society in 1982 is held over until the final chapter, where it is dealt with in the context of the inquiry as a whole.

In the introduction to this chapter, it was claimed that the period can be described as that of the *child as citizen*, that this was realised by the move towards a *social justice* model, and that the vehicle for this change was a burgeoning preoccupation with the rights of children. Each of the previous periods reviewed had exhibited unique social inventions for governing children; the notion of rights was the invention of this period, for the concept of rights in relation to children seemed to have been entirely absent from New Zealand social policy documents until the 1970s. The *Sutherland Report* (Report of the Steering Commitee on a Bill of Rights for Children, 1976) was the first, and a flood of documentation and activities followed.

If *social justice* was the model, then *injustices* to children were the practices to be identified and changed so that they could realise their rights. These were fairly easy to find by those with a mission to do so. The issues fell into two broad divisions. On the one side were claims that centred around the diminished rights accorded to children when compared with adults. These included the grievances of corporal punishment, solitary confinement without

trial, treatment without consent, and the denial of cultural identity. It was claimed that these practices were justified as protecting children. On the other side, there were claims that children were not protected enough, or were protected in the wrong ways.

On the basis of quantity, it seems unequivocally clear that in the thirteen-year period under review, children and young persons were the subject of more attention by those determining policy than at any time in the past. One could argue that this was merely a by-product of the 1970s penchant for the commission of inquiry, the review board and the working party, and all their variants. Additionally, some allowance has to be made for the IYC in 1979 and the way that the preliminaries to it sensitised intellectuals, reformers and lobbyists to the children's cause, and, along with the Year itself, provided forums and outlets for opinions and research. Even if those inquiries in which children were not the central concern were to be discounted, the sheer volume of policy review documentation dealing specifically with children and young persons was remarkably large when compared with past periods.

The themes of all of this activity were the relationship between the state and children, and the mediating role of the state in determining relationships between children and others. While these topics were hardly fresh, four qualities unique to this period stand out. The first of these can be labelled *confrontational activism*, a characteristic shared by the groups that were prominent in the rights debates. These were either conservative, as in the case of SPUC or the Salvation Army, or libertarian, such as Acord and Nga Tamatoa. Neither of these lobbies represented the traditional social service agencies, which, as providers of services to children, had been prominent in promoting the children's cause in the past. Indeed, it must be noted that the views and activities of that middle ground have been somewhat played down in this account, and their role is returned to shortly. What both the extreme groups had in common was unconditional commitment to a particular ideology of childhood, a viewpoint on the rights of disadvantaged children and a confrontational method of social action.

A second quality is that of the *power base.* The conservative lobby found its support amongst popular opinion alarmed at the permissive tone of the age and seeking answers to problems of social stability. In contrast, the libertarian lobby was able to mobilise support from consumer and claimant groups who were in sufficient numbers to demonstrate the hurts and deprivations caused by the upheavals of economic recession. Examples of social injustices, especially the monocultural practices of the state social services, were compelling and difficult to rebut.

The third quality is the use made of *grievance mechanisms.* The invention of Parliamentary bodies, which stood outside the conventional bureaucracy and were charged with investigating administrative justice and human rights, changed the pattern of consumers' search for justice. No longer did they have to deal directly with the very Minister whose subordinates they were complaining about; their grievances could be dispassionately evaluated and, where plausible, an articulate and prestigious advocate would take up the cause.

The fourth, and final quality is that of *accountability.* Clearly, a social justice mission requires that policies that are problematic are capable of being challenged and meaningfully reviewed. That is, the underlying questions were in many cases more important than the single cases which the lobbies pursued. They were asking, in effect, who is responsible for these policies and who is in a position to change them? To sum up this analysis, children's rights were brought to the forefront by activists who had a power base rooted in popular opinion or supported by consumer claims, used methods of uncompromising confrontational techniques, expressed their claims not only to the public and government, but also through grievance mechanisms, and had a common mission of establishing accountability for children's rights.

The pressing question is whether or not this was merely a new way of conceptualizing old issues. Put another way, what was the social services arm

of the state doing that was any different from the past? There is a good case to be made that it was carrying out traditional practices more efficiently and more humanely than ever before. Right across the board, in all areas of substitute care and child protective services, state social services were consciously striving to make their practices more client-centred. More time and more money were being spent on child welfare than at any time in the past. The answer lies not so much with the practices but with the policies. Social values and expectations had moved ahead of the paternalism of policies for children to the extent that no amount of adjustment of practices would have satisfied the demand for the recognition of rights.

Thus far, the focus has been on the state as the source of policy and the provider of services. The state agencies were unable to escape the attentions of the reformist movements and bore the brunt of the assault for rights. Changing social values affected the non-statutory sector in a more subtle and less public fashion. There, the claim for consumer rights expressed itself through the notion of *participation*. A movement which began with co-opting clients to undertake service tasks changed direction as the benefits of co-opting them also into agency government became apparent. In some cases that was an agreeable solution, but in others the degree of participation was seen as tokenism. A further development in those instances was the creation of client support groups, either opposing the mainstream agencies or, at the least, taking control of their own lives.

A further question needs to be asked about the nature of this invention of the concept of children's rights, namely, does it have permanence in influencing policies for children? That is taken up in the next chapter.

CHAPTER IX

CONCLUSION: CHILDREN, THEIR RIGHTS AND THE STATE

This concluding chapter serves two purposes; it summarises the major themes dealt with throughout the work as whole, and it makes some generalisations about the utility of the theory applied to the analysis of policy. The first part acts as a summary statement of policies and practices for children in 1982, with some reference to the past, and relates provisions to rights. The second part discusses the interrelationship of ideology, structure and process as determinants of policy for the governing of children. It covers the argument for a construction of social policy that recognises children as a distinct interest group, separate from family policy, but overlapping and complementary to it. Finally, the components of a developmental policy model for children are outlined

PROVISION FOR CHILDREN

The state determines what shall be provided for the well-being of children and sets limits to their rights and freedoms. Those control functions of policy have been the emphasis of this inquiry and such aspects are most evident in the areas of children's civil status, substitute care, juvenile justice, and to a lesser extent, health and education. With no attempt to be exhaustive, these are reviewed in turn, before shifting to look briefly at structural inequalities as these affect policies and practices for children in general, and the effects of gender, ethnicity, and income in particular. This first part ends with a resumé of the characteristics of these entitlements and controls.

Civil Status

Throughout the chronological development of this inquiry, indicators of the civil status and legal capacity of children and young persons have been given at each period. To draw these aspects together for 1982, the principal areas of age-related legal capacity are illustrated in Figure 1. These are shown, from the top down, by the categories of law enforcement interventions, legal status, the education system, income maintenance and employment, guardianship, custody and adoption and some miscellaneous provisions. Vertical lines in the figure show the limits of legal capacity at the ages given in the middle line. The common capacities start or finish between the ages of fourteen and seventeen and the age of majority is reached at twenty, conferring full adult status. That fourteen to seventeen years age span—the age of *young persons* —is the stage in the Western world when "Not only are the young economically burdensome within the family, but the family itself is also a burden on the child" (Kett, 1976: 214). State regulation of children in the family setting is dealt with next.

Guardianship. For the first forty-year period of Pakeha settlement, 1840 to 1879, minors were the responsibility and property of their fathers. This common-law principle was based on the theory that a father's rights flowed from his duties. It was observed of that period in Britain that the courts could easily decide a challenge to the rights of fathers, but ". . . enforcing the duties of the father presented insuperable difficulties, especially when he was without property" (Abbott, 1938: 7). The injustice of the common law to wives and mothers was heightened by the egalitarian relationship between pioneer husbands and wives, and by the high rate of solo mothers owing to desertion and risks of the new world. Following remedies for mothers to obtain custody of young children under British law, New Zealand law moved fairly quickly ahead to give equal guardianship rights to both parents. That situation has continued on the assumption that sensible parents will agree on sensible care and protection for their children.

	AGE OF SEXUAL CONSENT (May not purchase or receive instruction in contraception)											MARRIAGE BY PARENTAL CONSENT				
LAW ENFORCEMENT INTERVENTIONS											CRIMINAL JUSTICE SYSTEM PROBATION/PRISON					
	MAXIMUM AGE FOR COMMITTAL TO CARE OF D-G, DSW												DSW WARDSHIP LIMIT			
	CHILDREN AND YOUNG PERSONS COURT												DISTRICT AND SUPERIOR COURTS			
	CHILDREN'S BOARD JURISDICTION									CONVICTED YOUNG PERSONS						
LEGAL STATUS	LEGAL CHILD (not criminally responsible)									YOUNG PERSON						
	MINORS AT LAW (some contractual exceptions 16-20)											Age of Majority Act, 1970				
AGE	0	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
EDUCATION	COMPULSORY SCHOOL ENTRY		COMPULSORY EDUCATION FOR HANDICAPPED (SEC.115)									SCHOOL LEAVING AGE				
INCOME MAINTENANCE/ LABOUR										FAMILY BENEFIT CEASES			UNLESS DEPENDENT			
										NO FRESH MAINTENANCE ORDER BEYOND			ORPHANS BENEFIT CEASES			
										FACTORIES ACT PROHIBITS EMPLOYMENT (exemption for age 15 to 16 possible)			UNEMPLOYMENT BENEFIT PAYABLE			
GUARDIANSHIP, CUSTODY AND ADOPTION	Counsel may be appointed to represent child(ren) independent of parents												Young persons may not be forced to reside at home			
	Court to ascertain wishes of child having regard to "age and maturity"															
	Subject of adoption order ("child") must be under age 20 at time of order															
MISCELLANEOUS	PRIVATE FOSTERING IN LICENSED HOME ONLY		MAY NOT RIDE ON TRACTOR					DRIVER'S LICENCE			PURCHASE TOBACCO PURCHASE ALCOHOL					

FIGURE 1

Status and legal capacity of children, 1982

At first, the sanctity of marriage was enforced by the creation of two separate jurisdictions for marital disputes. The lower courts, formerly Magistrates' and now District Courts, dealt with issues such as separation, maintenance and custody, while divorce was reserved for the Supreme Court. Once it became possible for one or both of the parties to bring their custody dispute to court, the state had to legislate for ways in which decisions would be made between one parent or other. The "welfare of the child" principle was introduced in the nineteenth century, first given form as the "tender years" doctrine, derived from a reluctance to see children under seven separated from their mothers. Custody for older children was determined on a gender basis, with girls remaining with their mothers and boys with fathers, but over the years attitudes changed on the interpretation of that guideline. Children over twelve years old were to be consulted on custody preferences.

All of the matters regarding the guardianship status of children are today dealt with by the Family Court, at either the separation—or threatened separation—of parents or the dissolution of their marriage. The court now consults all children capable of understanding the issue. From the time in the 1950s when amateur marriage counselling was fostered by the state to help it in its task of invigilating marriages and cushioning the effects of dissolution, the emergence of the professional therapist has brought a body of theory and practice knowledge about family dynamics into guardianship and custody matters. In turn, these professionals commonly appear as expert witnesses to give evidence on the psychological and emotional quality of the relationship between the contesting parties and their children. To the former criterion of financial ability to provide has been added the notions of *bonding* and *psychological attachment.*

The state has no interest in custody arrangements except when the parents are unable to agree, or where a third party seeks custody of a child. It has been pointed out by a Family Court mediator, who made an unsuccessful submission on the matter to the Select Committee considering family law, that children are

precluded from initiating proceedings in the Family Court (Luckock, 1987). Such a contingency could arise after a concluded hearing when a child is unhappy with the agreement reached, and neither parent is willing, or even aware of the need, to take the grievance back to court. As well as the question of who speaks for the child, there is the matter of who holds the child's interests foremost. It is difficult to see whether the decision by the state not to require a nominated, personal guardian for every child frees them from adult tyranny or costs them the loss of wise counsel.

Ex-nuptial children. Illegitimacy had the distinction of being a social issue of such concern that it was the subject of the first New Zealand legislation governing children—the1846 Ordinance on destitute persons. Social values and attitudes have shifted ground on this question to an extent that it impossible to find continuities from early practices to the present. In keeping with the aversive measures of the Poor Law mentality, illegitimacy once placed children at risk of explicit discrimination in the form of exclusion from benefits entitlement and certain vocations. Moreover, as children and adults, people born out of wedlock were stigmatised in everyday social relations. All that is gone, in law by the *Status of Children Act, 1969*, and in society by the lesser importance placed on what has become a commonplace choice of unmarried parents.

Legal capacity. As observed earlier, civil status and legal capacity are reciprocal concepts. When a person is regarded by law as a minor, his or her capacity to free association is limited in several ways. These restrictions put children into a general category of *protected persons*, along with adults whose mental capacity have been adjudged diminished. Age-grading is a social invention, and children are the only category of the social order who are discriminated against on the grounds of age. The reasons have been plain for all to see when children required protection against hazards, or exploitation by adults, and those practices have been seen to contribute to the stability of society. The insoluble question for the state, in acting as a *wise parent* and legislating on activities of work, sexual behaviour, drinking and smoking and the like, has been finding a consensus on a threshold age. Variety of individual

human development has invariably meant that for some children and young persons the protection may be unnecessary while for others the conferment of capacity may be premature. The problem is compounded by the varying ages set for capacity in the areas shown in Figure 1, which may seem to young persons and society at large to indicate arbitrariness and uncertainty in arriving at a threshold.

For children and young persons, breaches of their legal capacity led in turn to intervention by law enforcement agencies for reasons not applicable to adults; Americans use the apt term, *status offences*, to describe those cases. Considering status offences and the requirement to specify a threshold age together, there can be seen, in recent times at least, a loss of credibility over the wisdom and justice of interpreting and enforcing laws that seemed illogical or trivial. Changed attitudes towards young persons living independently, for example, have reduced interest in following up those under sixteen who have run away from home. Many other limitations, under-age drinking especially, are likewise not enforced by informal social sanctions when the law seems arbitrarily arrived at. Nevertheless, we persist in the practice of age discrimination for want of a better solution to the tension between protection and liberty. The state has, however, come down quite firmly on the issue of protection for the younger child, especially those whose families cannot care for them.

Substitute Care

The idea of an unwanted child was unthinkable in communal Maori society. In Pakeha society, however, the status of illegitimacy or indigency, were considerable social and personal problems and, if that stigma failed to mark the person for life, the subsequent treatment by rescue agencies might. Where kin could not provide, because of financial or social exigencies, the state stepped in to extract support from them or to assist in placement. The disposal of unwanted and troublesome children was an early preoccupation of Pakeha society, and the traditional English remedy of *indoor relief*, that is, placement in

an institution, was developed through orphanages, private nurseries, industrial schools and the like. For young persons, and those who outgrew residential care, apprenticeship and placement at service was the remedy. Without the benefits or the restraints of established patterns of charitable agencies common to Britain, New Zealand pioneered alternative forms of care in the late nineteenth century, and by 1925 centralised state control of the substitute care of children was firmly established. Then, as now, the state tended to be the agency of last resort, providing services for older and more difficult children. Territoriality is strictly observed between the departments of state responsible for children's welfare, health and education. The non-statutory agencies, mainly run by the churches, initially provided large-scale care for the more biddable, younger children and family groups. Through this combination of state and non-statutory agency provision, differential treatment for atypical children was achieved, by which children were assigned to medical, educational or social-therapeutic regimes. Of the last, adoption, foster care, day care and residential care have remained the central modes.

Adoption. Legally introduced in 1881, as the first state adoption system in the British Empire—worldwide, second only to two American states—New Zealand policy on adoption was for nearly a century the solution to the problem of illegitimacy. Until the late 1950s there was a plentiful supply of ex-nuptial new-born infants made available to satisfy the adoption market. Falling family size and the acceptability of adoption as a solution to childlessness, created an unfullfilled demand which intensified over the 1960s and 1970s with the trend for unmarried mothers to keep the babies. By the late 1970s, the experiences of other countries were being repeated here. As the supply of white, healthy, neonates diminished, adoption agencies turned to the task of matching the needs of adoptive parents with those of atypical children. Hitherto "unplaceable" children included the handicapped, those of incestuous unions, mixed-race, and older children. As adoption agencies promoted these alternatives, their practices meshed with a new development—the so-called *open adoption*. Helping adoptive parents to maintain the legal fiction of adoption in a real-life deception had been relatively easy when the adoptee

was new-born and looked like them. In the new situation, it was patently absurd, if not impossible, to deny the origins of the adoptee. Similarly, as single mothers were encouraged by social attitudes to take more charge of their lives, many were willing to consent to adoption on the basis of continuing information about and, in some cases, continuing contact with their child.

The widespread practice for step-parents to adopt the children of their spouses hugely inflated adoption figures and the desirability of that practice has been questioned for the last decade (Johnston, 1981b).

Of most importance in the development of adoption policy was the decision in 1955 to seal court records so that adoptees could not search their origins except on application to the court on "some special ground". This was a classic example of a policy which in time was to become more contentious than the problem it sought to remedy. In addition, it was later defined as a serious limitation upon the civil rights of adults for events which had occurred in their childhood. Opinion was divided on opening records for inspection, with many complex situations affecting the balance of rights being identified. Despite the changes in current practices towards more open adoption and the vigorous and sustained lobby supporting private Parlimentary Bills to allow information to adult adoptees, Parliament was still unmoved by 1982. Meantime, those affected by the sealed record policy joined together, with considerable success, to share their skills in self-searching and legal advocacy.

Foster care. Prior to 1883, foster care was a practice largely reserved for suckling infants. Church agencies and charitable aid boards paid for young infants to be cared for in private homes in cases where admission to their institutions was inappropriate. The fostering of children on a paid basis got under way on a large scale from 1883, when the state was convinced that this was a cheaper and more humane method of care than keeping them in institutions. Boarding out, as it was called, was first invigilated by the police (as were adoptions), and the machinery for foster care placement and oversight was clumsy and fragmented. Fostering fell broadly into two types: those

arrangements made privately by parents for young children, usually unmarried mothers, and those made by state or non-statutory agencies after children had come into care.

In the first category, the scandals of the baby farms in the late 1880s led directly to legislation to control the conditions under which nursery homes could operate. Infant Life Protection Acts, introduced in 1893, remained the basis of regulation until consolidated into the *Child Welfare Act, 1925*, but the underlying principle has remained unchanged. Anyone who cares for a child under the age of six years, for reward or payment, must have a licence and must open their home to official inspection on demand.

In the second category, children unable to be maintained in their own homes, the state gave an early lead through the policy and practices of the Child Welfare Division. By 1925, a network of child care and protective services had been developed, and the empowering Act of that year required that children should not be maintained in institutions "save in exceptional circumstances". Foster care has to this day remained the preferred mode of care for state wards. The non-state sector was much slower to follow that lead, as shown in the section on residential care.

Compared with early practices, foster care in New Zealand took a great leap forward in the last twenty-five years, with a more planned approach to placement and care on the part of the agencies and the foster parents. That movement was strengthened in 1976 with the formation of the New Zealand Foster Care Federation, which not only voiced the concerns of the foster parents but also acted as ginger group for the welfare of children in care.

Day care. Organised day care, falling between the educational aims of pre-school services and the welfare emphasis of licensed foster care, made its appearance in New Zealand during World War Two. Profiteering from low-quality, high-density group day care was shown in the late 1950s to be seriously jeopardising the welfare of young children. When this enterprise

came under state control with the introduction of the *Child Care Centre Regulations, 1960*, it was the last area of substitute care to be covered. Except for private, informal arrangements by parents, the state was now required to set and police standards of care in all situations where children lived away from their parents. Unlike other forms of substitute care, day care is the only area in which the central state itself provides no services. From the early 1970s onwards, the availability of day care assumed some political importance as a contingency of the participation of women in the work force. On the whole, the response of governments of both the left and the right has been to accept little responsibility for greater provision.

Residential care. The core to the history of child welfare in New Zealand is its institutions for children. Much was expected from them, goals that they failed, and still fail, to attain. Held up as the solutions to the disposal of unwanted children and as instruments for educating the poor, the early industrial schools ideal became perverted into a state reformatory system which, by 1918, so alarmed the officer responsible for them that he employed somewhat devious tactics to close them all down. Nor was that authoritarian repression of childhood spirit confined to state institutions as the accounts of the Stoke scandals in 1900 and 1912 revealed (Chapter V). By taking up foster care as the preferred mode for its wards, the state confined the use of institutions to short-stay homes for children on remand and in transit, and to a few longer-stay training centres for more disturbed and intractable cases. That pattern has remained relatively constant since the Beck plan was operationalized in 1925.

Non-statutory agencies continued to warehouse children in large institutions until World War Two. After 1945, however, there was a movement away from the large home and to the cottage home model. This paralleled a world-wide reaction against institutional care of children in the light of hard-hitting research about its deleterious effects. From the 1960s, most churches rapidly wound down their residential child care services. The exception was the Roman Catholic Church, which was slower to follow suit and by 1982 was the only church agency still offering residential care to troubled

teenage girls. The trend continues in the non-state sector towards smaller homes for the group care of children.

The state homes were back in the public eye in the mid-1970s. Indeed, this time they attained the distinction of being the subject of the first complaint to the Human Rights Commission—inaugurated in 1977—that involved allegations of fact. The homes were accused of the very same practices that had caused Beck to blanch seventy-odd years before: regimentation, inhumane and depersonalising practices, solitary confinement without trial, no access to schooling, and indifference to cultural identity. Critics decried the mixing of dependent and delinquent young persons together, and the brutalising programmes, which turned the Auckland homes into jails that denied the residents even the rights of prisoners. For its part, the Department of Social Welfare could only plead that increases in juvenile crime had stretched their resources to require tasks never before expected on that scale. Its response to the various inquiries was immediate and conciliatory. Practices complained of were stopped, and many of the recommendations for safeguarding the rights of children in care were implemented.

Substitute care reviewed. The principal features of the four areas just described are the high degree of centralisation of control; the inevitable fragmentation of services between the welfare, health and education ministries that are expected to co-operate rather than to integrate; the position that the state acts as the arbiter of policy and practices through its executive arm, while at the same time being itself a major provider of direct services; the role of the state as the agency of last resort; the inter-dependent relationship between the state and non-state sectors in setting and maintaining levels of service; the responsibility taken by the state for the education and training of social service workers in both sectors.

From the time that the Department of Education assumed control of child protection services and institutions in 1880, a twin system of services for children has been maintained. On the one hand, the state has set the rules and

provided for the most troubled and difficult children through it own network of provisions. That network also invigilated the non-state sector, through licencing, registration and funding procedures. On the other hand, the non-statutory agencies offered services to selected individuals and families and contracted to take wards and clients referred by the state. Directly, through capital works subsidies and indirectly through capitation payments, the state made a large investment in non-statutory social services for children.

Juvenile Justice

From the earliest days of Pakeha settlement, offending by children and young persons has been a serious problem for New Zealand society, no less because the rate of offending and the search for appropriate responses strike directly at perceptions of the stability of society. High reported rates of juvenile crime become a symbol of the condition of a society and act as a mirror of contemporary mores and policies for governing children. Solutions to counter such phenomena and policies to deal with the children and young persons involved are elusive and frequently divisive. Functionally and theoretically, the area of juvenile offending falls into three broad divisions. First, there is the law as applied to juveniles and the machinery of the courts for executing it. Second, are all the events and practices which proceed a court appearance of the child. Third, there is the disposition of those subject to a court order or conviction, and their subsequent care and treatment. Discussion on each of these follows.

Juvenile law and courts. Before the notion of separate laws and special courts for children took hold, New Zealand had a series of acts which combined methods of arraigning incorrigible children with a solution for their disposal. Beginning with the *Neglected and Criminal Children Act, 1867*, re-enacted in various forms until the turn of the century, it was possible for children to be sent to an industrial school as a judgement collateral to conviction on an offence. Originally, the intention was to have a reformatory system as a separate type of industrial school, but that plan was never realised. Thus, these early laws were more concerned with the disposal of awkward children than with a system of

criminal justice for them. Minor pieces of legislation were introduced early in the century, but these lacked sufficient cohesion for magistrates to use them to the widespread benefit of juveniles. Scattered experiments with a separate court and more individualised treatment of the young were applauded by the child welfare authorities and incorporated by them in the *Child Welfare Act, 1925*. A separate Children's Court was established. One significant change of policy in 1893 was legislation that prevented children under the age of seven years being convicted of any offence. That remained so until 1961, when the age of criminal responsibility was raised to ten years, then in 1974 it was raised to fourteen years at which age (excepting for the subsequent 1977 amendment on murder and manslaughter) it has since remained.

As shown in Chapter VI, the chance to introduce a separate legal code for juveniles was lost at the time of the *Child Welfare Act, 1925*, and since then New Zealand's juvenile justice system has comprised a separate jurisdiction operating on the adult criminal and civil codes. Apart from automatic name suppression for appearances in the Child and Young Persons Court, the range of dispositions available to the court is the only difference from the adult jurisdiction. These cover all the adult penalties for convicted young persons and the range of "welfare" dispositions, including the transfer of guardianship to the state.

A long-awaited overhaul of the child welfare legislation resulted in the Children and Young Persons Act, 1974. Apart from reviving the legal categories of *child* and *young person*, the only significant change of machinery was the introduction of Children's Boards, essentially a measure to divert children from a career of offending. The Act did, however, embellish the emphasis upon the welfare of the child, which was not directly spelt out by its forerunner, and required a more active participation by parents in subsequent treatment. In most other respects, the Act was ". . . little more than a clarification and assimilation of existing practices" (Seymour, 1976: 51). It is at present the principal legislation that governs children and young persons.

Arrest, arraignment and diversion. The New Zealand record in providing separate custodial facilities solely for juveniles had throughout been rather dismal. The practice of holding young offenders in adult jails had periodically emerged as a public debating point, and notwithstanding official attempts to prevent it, the issue was as much alive in the 1970s as it had been a century before. Indeed, official pessimism that it could be stopped was demonstrated in the disclaimer appended by government when ratifying the Covenant on Civil and Political Rights in 1978. One of only four reservations set out in the Instrument of Ratification, it gave shortage of suitable facilities as the reason why Articles 10(2) (b) and 10(3) may not always be applied.

Once the comprehensive child welfare system was under way in 1926, it established a method for immediate investigation of young offenders and, where further risk was indicated, removal on warrant to one of the receiving homes kept for that purpose. The law required that a CWO prepare a pre-trial report once an offence was notified. Since 1974, those reports have had to be shown either to the child, the parents or their counsel. Not all intervention by child welfare was unwelcome by parents, and procedures for Child Welfare to assume control of children by agreement with parents were formalised in the 1925 Act and re-enacted in 1974. As well as being of assistance to families in distress, circumventing the court procedures was presumed to help prevent the beginnings of a delinquent career for acting-out children. An attempt at diverting young offenders from the juvenile justice system began in a small way with the conferences held between the Juvenile Crime Prevention Branch of the Police, later to become the Youth Aid Section, and the child welfare workers. Discretion on prosecution could be applied to substitute informal procedures such as warnings or invitations to seek guidance on the problems revealed. These schemes were the foundation for the Children's Boards introduced in 1975, which aim to work with parents and children on a co-operative, supportive and informal basis to help parents correct their parenting defects or to forestall further offending by children.

Dispositions: penalties and treatment. Under the Beck scheme, delinquent

and dependent children were treated on the same footing; the former viewed equally as victims of circumstance who had a need to be "rescued". Indeed, for some years an offence did not have to be committed for a court to decide that the circumstances of the child warranted its committal to care. Rather than the punishment fitting the crime, it was a case of treatment to save the child. In such a view, the alleged offence was immaterial to the intervention, and subsequent disposition was based upon the presumed needs of the child. In that regard, New Zealand was something of a leader when the *Child Welfare Act, 1925,* took away the power of the court to specify the place of residence and length of term for children deemed in need of care, protection or training. In those cases under the new Act, only one custodial disposition was available to the court and that was committal to care. It was then up to the child welfare officers to carry out the established practices of the Branch in deciding how substitute care was to be arranged, what contact the child would have with its family and when it might tbe discharged from care. That position prevails under the current law, subject to the practical constraints of the very significant review procedure, reinforced by obligatory planning conferences, not to mention increasing resort to High Court wardship.

Juvenile justice reviewed. The essential features of the New Zealand system are as follows. There is no comprehensive juvenile code, and the procedures are a mixture of protectionist and adult ones. Only young persons, people over fourteen, can be held criminally responsible, except in the case of murder or manslaughter, thus leading to uncertainty whether young people should be dealt with as victims themselves who are to be treated, or as young criminals to be punished. At present both stances operate. For example, the legislation provides for lengthy remands in custody for diagnostic purposes, but this is clearly treatment under another name. That practice is one of the areas of the juvenile justice system where the discrepancy between the rights of young persons and those of adults has been brought to attention. Close custody, the practice of locking up children and young persons in care, has been the other contentious area in recent years. Overall, it has been the battleground for those who espouse the right of children and young persons to

be accorded the same legal rights as adults.

Health

Health policies have played a significant part in the governing of New Zealand children. Children were recognised as key links in the control of infectious diseases and the promotion of public health. Most attention has been given in this inquiry to the way in which the state has controlled children for the public health, and those developments which fell at the intersection of health and welfare. Except for passing references, I have neither dealt directly with the health status of children nor with the development of the range of services now available for children. Similarly, little attention has been given to the complex area of children and young persons as patients of the mental health system.

As with welfare policies, these can be categorised into doing things *to* children and doing things *for* them. Such distinctions are always hard to define, because of situational variables that may render the same act an imperative for public health at one time and an infringement of individual rights at another. At times, children have been compulsorily vaccinated, at other times the state has made free or heavily subsidised treatment available to families. All in all, the considerable advances made in child health and state-subsidised primary and hospital care reached a peak in the 1960s, and these appear to have been in decline since then as the state has been unable to find ways to maintain them at former standards. By 1982, the health care of children appeared to be becoming more of a family concern than a state responsibility.

Education

Settler society placed a high value on the potential of education. Governor Grey saw it as part of his plan for the civilization of the Pacific, when schooling meant a Christian education given through church auspices. Provincial systems for schooling were established but not necessarily flourishing when

1877. That Act established the principle of a free, secular and compulsory education for each child, which has remained the cornerstone of the New Zealand system. For reasons of resources and family necessity, the ideal was not universally achieved until after the turn of the century, and access to secondary schooling not widespread until after 1936. The law now provides that each child may start school at five years of age, no later than age six, and must attend a state or recognised private school until age fifteen. Disputes over the assistance to denominational and private schools have waxed and waned, and in the last decade the state has, through the device of *integration*, assumed responsibility for those non-state schools that have agreed to some standardisation with the state system.

The education system is inextricably connected with the transmission of social values, with investments for the advancement of social and economic goals and with a host of secondary goals and ancillary practices. In this inquiry, I have concentrated on two aspects: the phenomenon of the separation of children from the adult world, and the connection between education and welfare through the field of special education. For ninety-two years, from 1880 to 1972, the state child welfare system was administratively part of the Department of Education. For reasons that have yet to be fully explained, from the 1930s the Child Welfare Branch exhibited a slow drift away from its parent department until finally separated from it in 1972.

Structural Inequalities

Cutting across the policies and practices described in this inquiry are a number of features of New Zealand society that are not peculiar to children but which affect their life chances in the same way as for adults. These are the children whom I have described as comprising the "second world of childhood". Of these structural features, three in particular can be identified for their direct bearing on children and have been alluded to in fragmented fashion throughout the text. The first of these is *gender*, and differential provisions for boys and girls. The second is *ethnicity* and, in this context, the significance of

the implementation of policies which have ostensibly treated Maori and non-Maori children alike. Third, there is the structural feature of *income*, a feature which in everyday language in New Zealand has come to be equated with social position. It has become commonplace in research to talk of low, middle and high-income families or sometimes, more inexactly, rich and poor people. A brief summary of the essential nature of these features is given here.

New Zealand has been, and essentially still is, a sexist society that favours male opportunities at the expense of females. Truby King, the founder of the influential Plunket Society, was well known for his views that girls should have a different education from boys to prepare them for the motherhood role (Olssen, 1981b; Parry, 1982). Discrimination of opportunity against girls remains an agendum for policy considerations.

This inquiry has used the androgynous terms of children and young persons, whereas much of what has been written was predominantly about boys. Thus, not only do boys attract more resources in the health, education and recreation sectors—male sports get more funding support than female ones—but also when we speak of juvenile offenders we are talking predominantly about boys. Indeed, the observation has been made that because female offending rates are so much lower than males, they have sometimes been excluded from studies of juvenile offenders. In the same connection, the hypothesis that the increase in *liberation* amongst women would lead to a corresponding increase in the female crime rate has been disproved in New Zealand. (Lovell and Stewart, 1984: 6, 55). Of special interest, however, is that Maori girls have a relatively much higher appearance rate in the Children and Young Persons Court than Pakeha males or females: Maori boys have an appearance rate more than three times that of others (Lovell and Stewart, 1984: 16).

Maori children have fared badly since Pakeha colonization. Initially, they were the victims of the foreign and, therefore, virulent diseases which threatened to wipe out Maoridom as a whole. Their infant mortality rates have

been consistently high, and and their health status has remained consistently low. The position of inequality suffered by Maori children is an artefact of the wider problem that Maori have become strangers in their own land. The early promise of missionary endeavours to preserve Maori language was not fulfilled by secular policies. Pakeha had chosen to interpret the Treaty of Waitangi as a licence to work towards the assimilation of Maori people into their ways and language, in which many Maori were happy to collude, believing it to be in their best interests.

In plain terms, New Zealand adopted a form of racism which held up Pakeha values, beliefs and systems as normal and the Maori counterparts as abnormal. When this attitude is transmitted through the practices of social institutions, it can be readily identified as institutional racism, which has been described as,

> . . . a bias in our social and administrative institutions that automatically benefits the dominant race or culture, while penalising minority and subordinate groups.
>
> The effects of institutional racism are graphically illustrated in our social statistics. For virtually every negative statistic in education, crime, child abuse, infant mortality, health and employment, the Maori figures are overwhelmingly dominant. In virtually every positive statistic in these areas, Maori are in miniscule proportions if not entirely absent.
>
> It is plain that the institutions, by which New Zealand society governs itself, distributes its resources and produces wealth, do not serve Maori people but they do clearly serve the great bulk of Pakeha people.
>
> The persistent myth advanced to explain the cause of Maori disadvantage is that the Maori have not "adapted" or have "failed" to grasp the opportunity that society offers. This is the notion that poverty is the fault of the poor.
>
> The fact is, though, that New Zealand institutions manifest a monocultural bias and the culture which shapes and directs that bias is Pakehatanga. The bias can be observed operating in law, government, the professions, health care, land ownership, welfare practices, education, town planning, the police, finance, business and spoken language. It permeates the media and our national economic life. If one is outside, one sees it as "the system". If one is cocooned within it, one sees it as the normal condition of existence (Report of the Advisory

Committee on a Maori Perspective for the Department of Social Welfare, 1987: Appendix, p.22).

Only since the mid-1970s has it been recognised that the rate of offending and the rate of care orders could be related to the operation of institutional racism as a structural determinant . The evidence has been apparent for some years, and in most cases was explained as a class or income feature—given the low socio-economic standing of Maori as a whole—or by the "broken home" hythothesis (Clay and Robinson, 1978: Fergusson, 1973; Fergusson and O'Neill, 1973; O'Connell, 1975). Turning that conceptual corner has opened up the possibility for the introduction of policies which take cognisance of cultural identity as both the explanation and the remedy to justice for children.

The egalitarian overlay to New Zealand, with its origins in the sociability of settler society, has been shown to be more apparent than real when it comes to the distribution of income (Pearson and Thorns, 1983). As New Zealand studies have shown, family income has a direct bearing on the life chances of children (Easton, 1980; O'Neill *et al.*, 1976). This strikes to the heart of the social justice issue for, as Jordan pointed out, income maintenance is the most sensitive and problematical area of state provision; in his opinion, the only way to break free of the ingrained attitude that income support creates dependency is to give a guaranteed income to all (Jordan, 1976: 206). Since the turn of the century, New Zealand has experimented with forms of family income supplements, tax benefits and child allowances, but these appear to have had little, if any, effect on reducing the numbers of children coming into care. The relationship between family income and the likelihood of coming to official notice as a welfare or criminal justice client is as well documented as that for ethnicity; poor children, those from low-income families, are more likely to come to official notice than others (Fergusson *et al.*, 1975). This suggests that it is rather hollow to talk of children's rights without a full consideration of the structural aspects of the society which shapes children's lives. Moreover, because children bear the brunt of the disadvantageous consequences, it denies the possibility of realising a just society, whether argued by Rawlsian

principles or any other theory.

Provision and Rights

I have alluded to a tension between providing for children and providing them with rights, and this has been amply demonstrated in the accounts of episodes that called for changes to practices. In this section, I make some generalisations about this issue and compare children's rights today with those of the past.

Materially, children in New Zealand have done no worse than adults in welfare provision, and in times of deprivation, welfare advances have been widely accepted as necessary and progressive responses to the nurture of children. What I have called services for socialization and nurture, the massive institutions of education and health in particular, have been accepted—some would say *captured*—by the middle ground, on behalf of the first world of childhood, as essential and integrative provisions. There is undeniably much debate and dispute on the details of such provision, but the banner goals to be strived for are readily agreed upon. The protecting state appears to do an adequate job of ensuring that that there is no absolute deprivation. For instance, there is an expectation in New Zealand that children will not die of malnutrition or neglect. The paternalistic nature of the welfare system as it applies to children is not universally accepted, and it has been in that area, including its parallel of juvenile justice, that the greatest demand has come for children to be accorded the same rights as adults.

Thus, what we see happening in issues of justice for children reflects the essential dualism of the welfare state; it protects and nurtures on the one side and controls and deters on the other. For example, at the time that the state was refining its income maintenance policy for children— the introduction of the Domestic Purposes Benefit—it was also having to come to grips with the demand that the rights and freedoms of children be made explicit.

Social provisions are also relative in time and space. What may seem a pressing problem at one time may lose all significance at another. Comparing actual provisions across time to find quantitative measures is meaningless without a comparison of the social conditions of the times. The evidence has shown quite clearly that the social context, the fluidity of *ideology*, is a much more useful indicator of the determinants of provision. As the social context changes, so the agenda for policy and the shape of practices follow. Furthermore, the social values used to describe each period of the review are in a sense cumulative rather than exclusive. It is a case of something added, and the new mix coming to the prominent foreground, rather than old values being replaced and disappearing. This argument suggests, for example, that even in 1982 it would be possible to find parents who regard their children as possessions, and some adults who believe that children should be protected but have no claim to explicit rights. The significance of such a proposition is that when these competing attitudes remain in opposition, there is the possibility that they win through as a political influence on policy.

Theoretically, we could see swings and cycles of social values, never exactly the same as in past eras, but embodying similar attitudes. In my view, we have seen in this study a number of minor retreats and major advances of the social values determining policy, and these seem linear rather than cyclic. A cycle of *process* is more likely, similar to that found in Packman's study of child care policy, where she identified events and activities in the 1940s which had exact parallels to those seen in the 1970s. At both times, "Failures in public care, scandal and a review of existing provisions led to a heightened appreciation of the needs of deprived children" (Packman, 1975: 191). This description of the process of policy change seems to apply equally well in New Zealand, where policy has also been reactive rather than anticipatory. However, as Packman cautions, to confuse process with contextural features is an illusion, and care must be taken not to trivialise the complexities of policy by describing it simply in terms of a cycle (Packman, 1975: 191).

There is apparent in this process of policy change a kind of *ratchet effect*,

as the solutions instituted by one generation become the causes and problems of the next. This is a truism with a fair degree of explanatory power when applied to this inquiry. It was seen in Chapter XIII how claims for the application of adult rights in substitute care provisions were focussed on the practices introduced earlier as solutions to problems about children. In an effort to stop children being warehoused in harsh institutional conditions, the child welfare reformer John Beck opted for the indeterminate "sentence" of wardship so that he and his co-workers could make decisions on placement according to the needs of the child. As events proved, the practice of having the state as regulator and provider of care led in the long run to dissatisfaction with its ability to make children's rights explicit. The authority of the state child-care agency to act above consideration of individual rights crumbled as advocates for its reluctant clients challenged its practices. Those successful challenges were made through the instruments—namely the Ombudsman and the Human Rights Commission—which the state had set up to monitor administrative justice and civil liberties. In this fashion, the state became the ultimate protector of children rights.

Such protection, however, raises the question of whether the contract for welfare provision can be fulfilled effectively in an adversary relationship. It raises fundamental issues about the criteria for intervening in family life, and methods of compulsory "treatment" to rescue children from their home environments. Most important is the issue of whether or not the new legalism in policy for children will itself become a problem in time. If the civil rights of children transcend their implicit right to be protected, then the mandate of rescue agencies, the state included, is lost. This has previously been expressed as "abandoning children to their rights" (p.52), and it found its best known expression in the phenomenon of *street kids* (Koopman-Boyden and Scott, 1984: 1), those troubled young people who exercise their rights to live independently, if not successfully, apart from their families. The former protectionism, heavy handed as it may have been, at least signified community concern. In the face of opposition to those methods, there has been a retreat of the state in favour of allowing groups and communities to take charge of their

lives and to find their own solutions to the welfare of children. Whether or not they can marshall the resources, the skills and the perserverance to take command of the interventions required to ensure an adequate quality of life for children is an open question. Self-determination may be a unproductive liberty without substantial support from the state.

Finally, I address the thesis set out in Chapter I that when social policy for children in 1840 is compared at intervals up to the year 1982, it can be seen that children have been given greater equality at law but remain the object of state intervention. The criterion adopted was the degree of difference in children's rights. I have tried to establish that such rights gradually moved from being almost wholly implicit to being both implicit and explicit, and exercised by the claimants. Referring to the typology shown in Table 1 (see p.70), it has been demonstrated that the move has been from the higher numbered cells, 7-12 , to the lower numbered cells 1-6 . The transformation was a function of shifts in social values encapsulating the predominant values, beliefs and attitudes towards the governing of children. These represented no more than indications of the array of values influencing policy and practices within a changing social context. Behind this cumulative progression has been the partial retreat of the traditional socialization agencies of the family and the church and the advance of the state into those areas concerned with governing children. The evidence presented in the historical chapters has reinforced that final proposition by showing how, from a position of minimal influence over children, the state is today all-pervasive in every aspect of their lives.

This inquiry has not pretended to be a phenomenological account of childhood. It has used as illustrative material accounts of experience to bolster explanations of policy, but it was not my purpose to elucidate the meaning of actual experience. The meaning of policy for children is the next, and final, theme.

A POLICY FOR CHILDREN

Whereas in the first part of this chapter the question was how New Zealand provides for children, the question now is how knowledge about that construction of the past can be used to decide a configuration of policy for children that is desirable, necessary and feasible to shape future provision. This final section brings together ideas that were raised in the first three chapters as they are informed by the substantive accounts of policies and practices given in Chapters IV—VIII. It asks, and seeks to elaborate, further questions about the ideology, structure, and process of social policy as it relates to children.

It was suggested in Chapter II that the recent introduction of the term *social policy* into policy studies in New Zealand marked a fresh method of looking at aspects of the task of government. I stated that because of its multi-layered nature, few people can give an adequate definition of the term, and even fewer can spell out in plain language its full meaning and application. As used in everyday parlance, however, it would at the very least be commonly agreed that social policy is about well-being or welfare and is something managed by the state. How those two aspects actually work is the basis for this discussion.

Discussion of welfare leads inescapably to consideration of ideology. I argued in Chapter II that *ideology* is the single most important determinant of welfare policy and practices. In Table 1 (p.23), where I set out four attributes of social policy, the roots of ideology are found in cell 1: what is believed about the rights and obligations of individuals finds expression in the policies that determine entitlement. Ideology is also the engine, the elusive but driving force, which shapes and legitimates structure, intervention and process. In this inquiry, I consciously used the expression *social values and attitudes* as an approximation to the term ideology, to identify and describe the consensual and prevailing beliefs about policy for children in each period. Even though I am

happy to concur with George and Wilding and write about competing ideologies of *collectivism* and *anti-collectivism* (1976), for example, it seems too over-drawn to write about an ideology of possession, of protectionism, and so on, in relation to children. Nevertheless, there is a sense in which those values, beliefs and attitudes added up to a distinctive ideology in each period.

There is a also a sense in which ideology determines the unit of policy analysis—families or children. My assertion in Chapter II that social policy is made up of many policies of shifting and overlapping boundaries, each responding to the press of social values, was followed by the idea that sectional policies can be complementary rather than competitive. There are clearly two levels of policy for children in New Zealand. One level is where children are seen as part of the family unit, and provisions for them are integrated with a wider family policy. That was the general approach taken by Koopman-Boyden and Scott (1984), and it is consistent with my metaphor of the "first world of childhood": the state enables the family to fulfil its parenting tasks for dependent children with minimum intrusion into family life. The other level operates when the family is unable to give physical and emotional nurture, to keep custody of its children, or control their behaviour. Those children are of the "second world of childhood". Their numbers are sufficiently large, and their circumstances perilous enough, to warrant a wide array of legislative provisions and controls over families, social service agencies, and children themselves. This inquiry has told the story of the formation of those structures, and, considered together, they sum up social policy for children as it stands at present. It is an aggregation of parts of family policy, and policies for social objectives as set out in Table 2 (p.28), especially those of nurturance, protection and control. Although I did not attempt to tie policies for children to the political ethos of each period, it would be naïve to ignore that the two are inextricably interdependent.

While it may well be true that the succour of children has more political appeal than family policy (Koopman-Boyden and Scott, 1984: 18), there are reasons apart from ideological position why a policy for children diverges from

family policy. First, the state enters into a direct relationship with children, sometimes to the exclusion of the family, when it acts as guardian or as invigilator of caregivers other than parents. In recent years, it has also become the protector of children's civil rights, even to the extent of advocacy against its own social service arm. Second, the rights of children are not always compatible with those of parents (Packman, 1980: 11), and if their rights are to be properly understood and defended, they must be articulated separately from family policy in the first instance (Franklin, 1986: 16).

In my schema of social policy attributes, methods of illuminating and acting on a policy for children arise from cells 2 and 3, mediating between theory and intervention. Consider now the role of the state as mediator of social policy, which it does in two ways. One is its role in setting and maintaining policy directions and agenda, and the other is its role in providing services which implement those decisions. Each of these can be quantified on a scale from all to nothing, although it cannot be assumed that the absence of a pro-active policy signifies lack of interest by the state. In this connection, if social policy is a method of government, then the decision not to have a discernible policy—or not to expose it—is of itself a stance on policy. Thus, in reality, we are talking about situations where the state takes little part in determining social objectives, or where it has total involvement and control of policy-making.

The degree of intervention also influences structures in another way. Given that the purpose of these structures is to effect welfare for children, a further structural option lies in the way in which initial distributions of resources act to create different forms of social provision. In brief, this is the tension between *welfare state* and *welfare society*. Both are manifestations of *democratic-welfare-capitalism* but the first represents the view that the state will provide solutions to deprivation through transfers, goods and services. The vision of the welfare society goes beyond simple state interventionism to emphasise a just society, a high degree of altruism and what Jordan called ". . . some notion of shared participation in a social order" (Jordan, 1976: 93). How these two most diverge structurally is that the welfare society (perhaps a goal of

the first Labour government of 1935) emphasises a social contract based on an agreed initial distribution of resources rather than a supplementary distribution through institutions. The policy implication is to find ways of maximising citizen participation while at the same time providing adequate resources. Ideally, that consensus approach means bringing together all participating groups and agencies and calls for a unifying structure of co-operation and co-ordination.

What is found when these aspects of state involvement in policy are applied to some examples from the historical accounts given about children in New Zealand? Over the whole period, it can be seen that state involvement in policy grew from a minimal concern to a high degree of activity. Until the 1860s, the government of New Zealand had little mandate and little wish to interfere in family life. The laws governing children were confined to ensuring that relatives supported them and that children did not pass on contagious diseases or break the criminal law. Step by step, in moves to improve the lot of children, the state introduced policies that made children and their parents accountable to the state. In a break with family autonomy, schooling was made compulsory, an event that provides an example of high involvement in both policy and provision: the state sets the rules and becomes the funding source, landlord, employer and inspector of an enterprise that touches all New Zealand children. Similarly in 1973, the state changed the unit of welfare from the family to the individual to provide a guaranteed income for all dependent children of caregivers out of the workforce. By 1982, varied and influential state interventions had been established in income maintenance, education, health and welfare, and had fostered widespread acceptance of the state as the primary provider. At no time, however, has it been possible to find a definitive statement of policy for children.

At present in New Zealand we have only a rudimentary knowledge of the the process of social policy as it affects children. Process is about choices and conflict, and ways of legitimising and sustaining social goals. However, we have neither the structures which allow the components of policy to be made explicit, nor a conceptual model that can be usefully applied to explain the

process of policy making. If the interests of children are to be promoted, and if further progress is to be made in policy studies, it will be necessary to develop a model which can accommodate the aspects discussed in this section.

To be of any practical use, a policy for children must first of all be in written form, a document that covers the expectations held by the state, the explicit rights and obligations of children, supported by an explanation of the structures and process by which these might be attained. It must describe the essential elements and the way they work together. Foremost amongst these is the need to make ideology explicit, and the capacity to deal with a wide divergence of values and beliefs. In the New Zealand context, a high priority must be given to advancing the goal of bi-culturalism, and facing the dysfunctions of institutional racism. The process should allow policy for children to be seen as separate from but complementary to other social policies, especially family policy. Ideally, it would give attention to the classic dilemma (noted on p.33) between the freedoms of children and the call for them to be protected. To overcome the dysfunctional aspects of traditional policy making, the policy process ought to be dynamic, capable of monitoring social conditions, evaluating and influencing the structures governing children. We are looking for a policy process which is anticipatory rather than reactive, permeable rather than closed and, above all, responsive to the immediate needs and rights of children.

The development of a comprehensive and integrated social policy model for children promises a method of fulfilling children's needs and rights in a meaningful and socially harmonious way. If social policy is truly an expression of the political will, then the choice is ours.

CHAPTER X

EPILOGUE

This account of policy for children was completed in 1987, but it covers events only to 1982 because of the difficulty of attempting to describe with any accuracy matters which are still in a state of flux. In the interval, a number of significant developments have occurred, all of which indicate that the thrust of a *social justice* approach to policy for children and young persons continues. I present them here by topic rather than time sequence, beginning with some specifics of policy and practice and concluding with some indicators of change in ideology and structure.

On 1 January, 1983, the provisions of s.10 of the *Children and Young Persons Act, 1974*, requiring state social workers to make inquiries into all ex-nuptial births were repealed by an amending Act. This brought to an end a long-established policy predicated on the notion that such children were more at risk than other children. In announcing the change, the Director-General noted that the percentage of ex-nuptial births had continued to rise. However, where the mother is under the age of eighteen, ". . . the social workers continue, by administrative arrangements, to offer help and advice" (AJHR, 1983, E.12: 33).

The aims of adoption rights groups were fulfilled in September, 1985, with the passing of the *Adult Adoption Information Act.* In brief, the Act provided that any party to an adoption could apply to the Department of Social Welfare for information on the circumstances of the adoption and the identities of the other parties, provided that none of these had registered an objection to disclosure. The Department offers counselling on the action contemplated, and in the first year of operation more than 10,000 people made use of the information service (AJHR, 1987, E.12: 33). A review of the *Adoption Act, 1955,* is currently being

undertaken by a working party convened by the Department of Justice, and its first discussion document suggests extensive changes to adoption policy and practice (Department of Justice, 1987).

The Family Courts, created as a division of District Courts at the end of 1981, were hearing cases by the end of 1982. These new procedures entirely changed the way in which matrimonial disputes are dealt with, emphasising informality, mediation and consent between parties in place of the former adversarial approach. Great emphasis is placed upon early assistance by court officers. The specialty of family law is now recognised to embrace professions wider than barristers and solictors, and in addition to counsel for the child, the engagement of family court counsellors, psychiatrists and psychologists has become accepted practice.

The series of investigations into child welfare practices begun with the Acord complaints in Auckland in 1978 (see pp.350-58), continued when the scope of legislation, procedures and practices relating to children and young persons coming to notice for offences was referred to the Race Relations Conciliator, E. Te R. Tauroa. Gathering around him an advisory committee, Mr Tauroa submitted in 1983 a comprehensive report of the procedures examined and suggestions for change (Tauroa, 1983). The recommendations of this report, together with those of the Human Rights Commission (1982), the Johnston Inquiry into residential practices (1982), and the working party on *Access to the Law* (Department of Justice, 1981), were referred to the Cabinet Committee on Family and Social Affairs.

The common theme of these reports was the institutional racism evident in the Department of Social Welfare and the juvenile justice system, and the urgent need for culturally sensitive child welfare practices to be introduced. The first of these, the Maatua Whangai programme, was introduced in 1983. Run jointly by the Departments of Social Welfare, Maori Affairs and Justice, Maatua Whangai is a community-based scheme that provides child care for Maori children within *whanau Maori*, for children who cannot live at home, or

would otherwise be placed in institutions. The aim is to reduce the numbers of children and young persons in residential care and the disproportionate numbers of Maori youth in care. An emphasis on a knowledge of self through genealogy and tribal affiliation is the core of the programme (Karetai, 1985). Its introduction was a portent of wider changes to come.

From these beginnings, the Department of Social Welfare embarked on a re-appraisal of its philosophy and structure. An Advisory Committee on a Maori Perspective for the Department was set up in 1986 and published its report, *Puao-Te-Ata-Tu* (*Day break*), in 1987, with the immediate effect of a promise by the Minister and Director-General of full implementation of its recommendations. Control of policy for the Department is to be vested in a Social Welfare Commission, comprising an equal number of Maori and Pakeha nominees, and the representation of minority cultures. Moves for a regional structure for the Department were already under way, and the suggestions of *Puao-Te-Ata-Tu* for greater local control and meaningful collaboration with Maori, were able to be meshed with that plan. The Social Work Division of the Head Office of the Department was disestablished in 1987, and all of its former functions devolved on six regional offices. The Director-General stated that:

> In terms of organisation and structure, the most significant change to come about from this development was the establishment of the Social Welfare Commission and District Executive Committees with specific provision for minority cultural and client groups to be represented. The concept of community development was taken a step further by placing departmental child care institutions under the direct control of local boards of management (Grant, 1987: 3).

To further the goal of keeping young persons, Maori youngsters in particular, out of institutions, the Department is well advanced in a plan to close many homes: six pre-adolescent facilities were closed in 1986-87. The former mix of local short-stay homes and a few large national training institutions has been abandoned in favour of entirely localised programmes, bringing to an end the practice of sending children and young persons out of their own regions (AJHR, 1987, E.12: 32). A review of the *Children and Young Persons Act,*

1974, begun in 1984, led initially to the publication of a discussion document and a draft Bill (Department of Social Welfare, 1984). Subsequently, however, the Bill has been rejected by the Advisory Committee on a Maori Perspective on the grounds that it lacks an adequate bi-cultural perspective. After the general election of 1987, the new Minister of Social Welfare announced that he was withdrawing the Bill for revisions that take into account those criticisms.

The changes being implemented in the Department of Social Welfare go much further than its administrative structures. A commitment has been made to an affirmative employment policy for Maori, and a goal of complete bi-culturalism for departmental child care staff and practices set for the year 1990.

The Committee for Children continued it work of monitoring provisions for children and providing educational programmes for the community and professionals on children at risk, particularly information on the identification of child abuse, and referral and intervention practices. During 1987, however, the Committee advised that its funds were exhausted and that unless a government grant was forthcoming, it would have to go into recess. It seems likely that part of government's cautious response to claims of this type lies in its ambitions for a major review of social policy.

In 1987, a Royal Commission on Social Policy was established to inquire into the extent to which existing instruments of policy meet the needs of New Zealanders and to recommend changes that will lead to a more just society. Of interest to this study is the fact that from a position ten years ago when the term *social policy* was used solely by academics and rarely heard about as a method of government, it has sprung into prominence as a field covering all aspects of New Zealand life and well-being. The Royal Commission has followed the fashion of the times for increasing public participation by holding it hearings in local communities, many on marae, by encouraging submissions in any form, oral or written, and by issuing periodic discussion papers on sectional topics.

Amongst the terms of reference of the Royal Commission is the instruction that it is to have regard to the "foundations of our society and economy. . . . [including] a commitment to the country's children and regard for the future generations of this country". Children have now attained recognition as a category deserving of policy consideration in their own right.

APPENDIX A

TABLE 9

Population of New Zealand by adults and minors

Year	Population	Adults		Minors	
		N	%	N	%
1848	16 003	7791	48.68	8212	51.32
1867	217 681	121 037	55.60	96 644	44.40
1881	489 933	231 029	47.16	258 904	52.84
1886	578 482	270 243	46.72	308 239	53.28
1891	626 658	298 416	47.62	328 242	52.38
1896	703 360	352 581	50.13	350 779	49.87
1901	772 719	412 957	53.44	359 762	46.56
1906	888 578	503 779	56.69	384 799	43.31
1911	1 008 468	586 992	58.21	421 476	41.79
1916	1 099 449	627 871	57.11	471 578	42.89
1921	1 218 913	708 980	58.16	509 933	41.84
1926	1 344 410	795 072	59.14	549 338	36.16
1936	1 491 484	952 146	63.84	539 338	36.16
1945	1 603 554	1 037 469	64.70	566 085	35.30
1951	1 939 472	1 238 337	63.85	701 135	36.15
1956	2 174 062	1 335 159	61.41	838 903	38.59
1961	2 414 984	1 429 823	59.21	985 161	40.79
1966	2 676 919	1 559 153	58.25	1 117 766	41.75
1971	2 862 631	1 692 219	59.11	1 170 412	40.89
1976	3 129 383	1 900 441	60.73	1 228 942	39.27
1981	3 175 737	2 019 237	63.58	1 156 500	36.42

Source: New Zealand Census for dates listed

1. Maori population figures included only from 1926 onward.
2. The definition of *minors* includes all people under 21 years for census up to and including 1936. From 1945 onward, *minors* are those under age 20.

APPENDIX B

GLOSSARY OF TERMS

Short definitions of the technical terms used in this thesis are given here in alphabetical order. This serves two purposes. The first is to clarify the meaning of jargon and less commonly used words and phrases, and the second is to establish construct precision. Of less precise usage throughout the text, is the word *children* . For simplicity of expression and ease of reading, *children,* and its singular, is used to denote infants at law, those under the prevailing age of majority or without legal capacity. *Children* can encompass people in the age groupings from birth to eighteen, twenty or twenty-one years old. Wherever the sense requires that a finer distinction be made, the exact word is used.

Agency. A formal organisation, state or non-state, religious or secular, set-up to pursue charitable, social control and moral missions. Used here as a shortened form of social service agency.

Atypical children. Used as a synomyn for *exceptional children* (q.v.).

Banner goals. Abstract ideas that embody desirable ends, but without specifying the means by which they are to be attained.

Child. Legally since 1975, a boy or girl thirteen years of age or younger. See Chapter IX for the array of legal capacities which define the status of the child.

Child Welfare. Used as a proper noun, it denotes the Child Welfare Branch of the Department of Education,1926 to 1948, and later Child Welfare

Division ,1948 until 1972, when it was amalgamated with the Social Security Department to form the Department of Social Welfare. Used in the general sense, it covers those policies and practices directed towards the well being of children.

Child Welfare Officer. (CWO) The functionaries of the Child Welfare Branch. A statutory appointment with law enforcement powers, combined with a professional inclination towards social work.

Delinquent. Strictly, a person who has been convicted of an offence. In New Zealand, the term has become a contraction of *juvenile delinquent*, and includes not only known offenders but any young person whose behaviour is considered even marginally deviant. The term *juvenile offender* (q.v.) is preferrred here.

Dependency. The condition of relying upon others for the fulfilment of economic, physical, emotional or other human needs. This condition may be ascribed by others, but not necessarily internalised by the actor.

Embourgeoisement. The process of incorporation into the *bourgeoise* of elements of other classes (Mann, 1983). The term is used here to express the adaptation of working-class practices by middle-class people.

Exceptional children. "Those who deviate from what is supposed to be the average in physical, mental, emotional, or social characteristics to such an extent that they require special educational services in order to develop their maximum capacity" (Henry,1950: 3).

Ideology. A set of systematic beliefs, values and attitudes that express moral values and ideals about social organization and behaviour.

Indigence. Without financial support. A key concept under the filial responsibility laws known as *Destitute Persons Acts.* In the case of children, this meant the absence or incapacity of parents or those relatives legally responsible for their maintenance.

Indoor relief. The practice of residential care for dependent persons, such as the aged, the sick, the infirm and children, as a form of charitable aid. While it was not necessarily cheaper or more efficient than its complement, *outdoor relief* (q.v.), greater control and stigma was assumed to have a deterrent effect, thus reducing the admission rate. In the case of children's institutions, segregation was also thought to rescue the poor from the moral contamination of their homes and neighbourhoods.

Industrial school. Initially, a type of school for the training of poor children in habits of industry. After 1869 in New Zealand, the term became almost synonomous with *reformatory.*

Institution. This has two common and separate meanings. It is used herein to cover residential care facilities, particularly those run by the child welfare system which described its homes and schools as *institutions.* Less frequently, it is used in the sociological sense of established pattterns of behaviour which make up the major order units of society (Mitchell, 1968: 101).

Juvenile offender. A child or young person who has admitted offending, or against whom a criminal charge has been proven.

Orphanage. A residential institution run by a non-statutory agency and ostensibly for orphans. In reality, these places took children for a great

variety of other reasons.

Outdoor relief. Charitable aid to persons in their own homes or outside of institutions. An alternative to *indoor relief* (q.v.). Administered by *relieving officers* (q.v.).

Power. The application of the ability to induce or influence individuals or collectivities to follow a particular course of action.

Practice. Used to describe actions which are typical of the activities undertaken in the areas being discussed.

Psychotherapeutic ideal. Based on a belief that individuals' mental life can be studied, understood and influenced to change their behaviour for the better, and if widely applied through the helping therapies, will help reduce social problems.

Regulation. A type of subordinate legislation that allows the executive to make administrative rules. It is a device not widely used in the child welfare arena.

Relieving Officer. A functionary of the charitable aid boards, to receive, investigate and report upon claims for relief. Similar in character to the term *almoner*, but in New Zealand they appeared to be more aligned with administrative efficiency than with social work (see Tennant, 1983).

Residential care. Used synonomously with *indoor relief* (q.v.) for poor children, and to describe industrial schooling, reformatory, or children's home placement for unwanted and difficult children. Internationally, it has since the 1930's taken on the connotation of being part of a planned intervention in the lives of any children for whom other forms of

substitute care are inappropriate.

Social policy. An expression of the political will. It is a multi-layered concept which includes theories of social organisation, plans of action, instruments of implementation, and a field of study. Further elaborated in Chapter II.

Social values. A concept of preferred behaviour, regarded by widespread societal acceptance as desirable. Similar to but different from *ideology* (q.v.). In this inquiry, used to encapsulate the cluster of moral values surrounding accepted ways to explain and treat children.

State ward. A status for children invented with the Child Welfare Act, 1925, wherein a court could commit a child under the age of seventeen years to the care of the Superintendent of Child Welfare. The Superintendent became the statutory guardian to the exclusion of all others. With the passing of the Department of Social Welfare Act, 1971, the provision remained intact except that the designated guardian became the Director-General of Social Welfare.

Stigma. Originally from the Greek to denote the brand or mark distinguishing slaves from citizens. Adopted into psychological and social service vocabularies to express an internalised attitude of the individual as being discredited or discreditable, practices by agencies to engender such feelings, and negative social stereotypes towards "deviants". Illegitimacy, reinforced by discriminatory practices, was presumed to carry stigma for a child and its relatives.

Substitute care. Placement of children outside of their family of origin. A generic term covering residential care, adoption, fostering and day care in their many forms.

Superintendent. The executive head of Provincial Councils during the provinicial government period in New Zealand, 1852 to 1876.

Superintendent of Child Welfare. Chief executive of the Child Welfare Branch, later Division, of the Department of Education, in operation 1926 to 1972. Statutory guardian of *state wards* (q.v.).

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A.5A 1869	Second Report of the Commission of Inquiry into the conditions and nature of trust estates for religious, charitable and educational purposes.
D.14 1870	Report of the Flax Commissioners.
E.1 1881 *et seq.*	Annual Report of the Minister of Education.
E.3 1882 *et seq.*	Industrial Schools and Orphanages.
E.3 1890 *et seq.*	Industrial Schools.
E.3A 1884 *et seq.*	The Costley Training Institution.
E.3B 1897	State Children's Council. (Report of the South Australian State Children's Council as presented to both houses of the South Australian Legislature in accordance with Act.)
E.3B 1899	Industrial Schools.
E.3B 1900	Stoke Industrial School, Nelson. (Report of Royal Commission on, together with correspondence, evidence, and appendix.)
E.3C 1897	Neglected Children and Reformatory Schools. (Report of the Victorian Secretary and Inspector of neglected children and reformatory schools, as presented to both houses of the Victorian Parliament pursuant to Act.)
E.4 1882 *et seq.*	Deaf-and-Dumb Institution.
E.4 1895	School for Deaf Mutes.
E.4 1912 *et seq.*	Special Schools and Infant-Life Protection
E.4 1920 *et seq.*	State Care of Children, Special Schools, and Infant-Life Protection .

E.4 1926 *et seq.*	Child Welfare, State Care of Children, Special Schools, and Infant Life-Protection.
E.4 1967 *et seq.*	Report on the Work of the Child Welfare Division.
E.6 1881	The Boarding-Out of Industrial School Children.
E.6A 1881	Industrial Schools and Orphanages.
E.8 1881	Deaf-and-Dumb Institution.
E.11 1909	Reformatory Work in England, Germany and America. (Report by William Reece, of Christchurch, an official visitor under the New Zealand Industrial Schools Act.)
E.11 1917	Medical Inspection of Schools and School Children.
E.12 1973 *et seq.*	Annual Report of the Department of Social Welfare.
E.14 1888	Committals of Children to Industrial Schools.
E.25 1977	Report of the Commission of Inquiry into the case of a Niuean Boy.
H.1 1879	Report of the Royal Commission on Higher Education.
H.4 1886	The Prisons Department.
H.4 1891	Juvenile Offenders.
H.7 1883	Report of Inspector of Prisons.
H.7 1883	Department of Justice, Prisons Branch . (Report on the operation of 'The First Offenders Probation Act, 1886.')

H.7 1891	Hospitals and Charitable Institutions in the Colony.
H.8 1887	Department of Justice, Prisons Branch. (Report on the operation of 'The First Offenders Probation Act, 1886.')
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H.20A 1910	Juvenile Offenders.
H.22	Hospitals and Charitable Institutions of the Colony. 1896 *et seq.*
H.22A 1906	Report of the Commission of Inquiry into the Waltham 1906 Orphanage.
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H.31 1921 *et seq.*	Department of Health.
H.40 1890	Police Convictions Against Offenders Under Fourteen Years of Age.
I.5 1875	Report on Petition of Six Hundred and Seventy Inhabitants of Wanganui.

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